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SAN FRANCISCO
PORT COMMISSION

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REGULAR MEETING
4:00 P.M., TUESDAY, OCTOBER 13, 1998
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - September 22, 1998 Regular Meeting

3. **EXECUTIVE**

   A. Executive Director's Report

   B. Approval of a contract with the Bay Area Council in the amount of $650,000 for purposes of performing studies related to the Blue Ribbon Task Force for Bay Area Water Transit. Approval to accept and expend a grant in the amount of $50,000 from the Metropolitan Transportation Service for the study. Approval to accept and expend a grant in the amount of $600,000 from the California Department of Transportation for the study. (Resolution No. 98-101)

4. **MARITIME**

5. **REAL ESTATE**

6. **FACILITIES & OPERATIONS**

   A. Approval to advertise for competitive bids for the Pier 52 Public Boat Launch and Support Facilities Project. (Resolution No. 98-102)

   B. Authorization to award Construction Contract No. 2655, "Maintenance Dredging at Pier 35 East Phase II, Pier 35 West, and Pier 80 Berths A, B, and C" to Dutra Dredging Company. (Resolution No. 98-103)

7. **PLANNING & DEVELOPMENT**

   A. Authorization to issue a Request For Proposals ("RFP") for a mixed-use development for Pier 24-½ (Pier 24 Annex) (Resolution No. 98-104)

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8. FINANCE & ADMINISTRATION

A. Authorization to issue a Request for Bids to finance the lease/purchase of equipment. (Resolution No. 98-99)

9. CONSENT CALENDAR

A. Approval of license with Panelight Display Systems, Inc. for storage space located in the Ferry Building. (Resolution No. 98-100)

10. NEW BUSINESS / PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

11. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

b. Property: Seawall Lots 322-1, 323 and 324 located at Broadway and The Embarcadero.
Person Negotiating
Port of San Francisco: Kirk Bennett, Manager, Waterfront Development Projects.

An executive session has been calendared to provide directions to real estate negotiator regarding the Request for Qualifications/Proposals for a hotel development project.

c. Property: Rincon Park Restaurant
Person Negotiating
Port of San Francisco: Anne Cook, Manager, Waterfront Development Projects

An executive session has been calendared to provide directions to real estate negotiator regarding responses received to the Request for Proposals.

d. Property: Piers 27/29 and Piers 30/32
Person Negotiating
Port of San Francisco: Anne Cook, Manager, Waterfront Development Projects

An executive session has been calendared to provide directions to real estate negotiator regarding the Request for Qualifications/Proposals for a cruise terminal project.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS:

a. Discuss existing litigation matters pursuant to subdivision (a) of the California Government Code Section 54956.9 (three cases).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.
- CICO vs. CCSF, San Francisco Superior Court No. 989-618.
- CICO vs. CCSF, San Francisco Superior Court No. 989-294.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (two cases).

12. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

13. ADJOURNMENT

2 45226 SFPL: ECONO JR
107 SFPL 06/16/00

PORT OF SAN FRANCISCO

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MEMORANDUM

October 8, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice-President
Hon. Michael Hardeman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of a contract with the Bay Area Council in the amount of $650,000 and acceptance and authorization to expend grants from MTC and Caltrans.

DIRECTOR'S RECOMMENDATION: APPROVE THE CONTRACT WITH THE BAY AREA COUNCIL AND THE ACCEPTANCE OF THE GRANTS FROM MTC AND CALTRANS

BACKGROUND

The State of California established through legislation, a Blue Ribbon Task Force for Bay Area Water Transit. The Port sits as a member of the Task Force. The Bay Area Council, a non-profit regional policy group, was given the actual responsibility for administering the study and for organizing the Blue Ribbon Task Force. The Task Force has been meeting since March of this year. It is expected to complete its work in March 1999. The end result will be a report, which it will deliver to the State Legislature, identifying recommendations for ways to improve ferry service on the Bay.

To help offset the cost for the study, the Bay Area Council has identified a number of public funding sources from which it has successfully secured commitments. One of these funding sources is the Metropolitan Transportation Commission's Five Percent Reserve Bridge Toll program. The Blue Ribbon Task Force was awarded $50,000 under this MTC program in the name of the Port for purposes of completing this study. This resolution will allow the Port to accept these funds from MTC and contract with the Bay Area Council to complete the study.

THIS PRINT COVERS CALENDAR ITEM NO. **3B**

The members of the Blue Ribbon Task Force approached the State legislature and requested an allocation of additional funds needed to complete the study. The State Legislature allocated an additional $600,000 in the current year budget for this program, and designated Caltrans as the State agency for administering the funds. The Port was designated as the recipient of the funds, on behalf of the Blue Ribbon Task Force. As a condition of accepting these funds the Port is required to indemnify and hold harmless the State of California for any actions related to the work completed as a result of this grant. The Port's agreement to indemnify the State requires approval by the Board of Supervisors.

The Bay Area Council has contracted with Dames and Moore a local engineering and planning group to conduct the study. Dames and Moore is charged with producing a report that can be delivered to the State Legislature to fulfill the requirements under the state legislation. The contract between the Port and the Bay Area Council will help to offset the costs associated with this contract.

Staff recommends that the Commission accept for expenditure and seek Board of Supervisors' approval of a $50,000 grant from MTC and the $600,000 grant from Caltrans. In addition the staff recommends that the Commission seek approval from the Board of Supervisors for the Port's agreement to indemnify the State of California against actions related to the awarding of the Caltrans grant. Staff also recommends that the Commission authorize the Port Director to enter into a contract with the Bay Area Council, in the amount of $650,000 for purposes of completing the work of the Blue Ribbon Task Force.

Prepared by: Larry Florin, Special Assistant

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-101

WHEREAS, The State of California, through legislation, has created a Blue Ribbon Task Force for Bay Area Water Transit; and

WHEREAS, The Bay Area Council has been designated as the lead agency for this study; and

WHEREAS, The Metropolitan Transportation Commission has awarded the Port of San Francisco $50,000 for funds related to the Blue Ribbon Task Force for Bay Area Water Transit; and

WHEREAS, The State of California through Caltrans has granted $600,000 to the Port of San Francisco for work related to the Blue Ribbon Task Force on Water Transit upon the condition that the Port agrees to indemnify the State of California for actions related to the work under the grant; and

WHEREAS, The Port of San Francisco wishes to contract with the Bay Area Council to complete the work of the Task Force identified in the state legislation; and

WHEREAS, The legislation which created the Task Force anticipated that the Bay Area Council would serve as staff to the Task Force; now, therefore, be it

RESOLVED, The Port Commission hereby accepts grant funds in the amount of $50,000 from the Metropolitan Transportation Commission's Five Percent Reserve Bridge Toll funds for work related to the Blue Ribbon Task Force for Bay Area Water Transit; and be it further

RESOLVED, That the Port Commission hereby accepts grant funds in the amount of $600,000 from the California Department of Transportation for work related to the Blue Ribbon Task Force for Bay Area Water Transit; and be it further

RESOLVED, That the Port Commission, as a condition to the Caltrans grant, agrees to indemnify the State of California for actions related to work performed under the grant, and authorizes staff to seek approval from the Board of Supervisors for such indemnity agreement; and, be it further

RESOLVED, That the Port Commission does hereby authorize the Port Director to enter into contract with the Bay Area Council in the amount of $650,000 for purposes of conducting work related to the Blue Ribbon Task Force for Bay Area Water Transit.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 13, 1998.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

October 6, 1998

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
www.sfport.com

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Permission to Advertise for Competitive Bids for the Pier 52 Public Boat Launch and Support Facilities Project

DIRECTOR'S RECOMMENDATION: TO APPROVE THE REQUEST FOR PERMISSION TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF THE PIER 52 PUBLIC BOAT LAUNCH AND SUPPORT FACILITIES PROJECT

Port Staff and an Architectural/Engineering Consultant Team have completed their design of the Public Access Improvements Project at Pier 52. Staff now recommends Port Commission approval for advertisement of the construction Bid for this project. The main project elements will include:

- a new Double-Lane Pile Supported Boat Launch with Boarding Floats;
- a Disability Accessible Gangway;
- Removal of concrete rubble debris and placement of new riprap Shoreline protection;
- a 40-space pull-through trailer boat Parking Lot;
- 15' wide minimum sidewalks, public access amenities including landscaping, paths along the shoreline, picnic tables, and benches; and
- Roadway improvements including four traffic lanes, as well as two bike lanes and a new crosswalk signal featuring an LED flashing light warning system.

The project has received approved Permits from the Bay Conservation and Development Commission and the U.S. Army Corps of Engineers. The Port Commission previously accepted responsibility to manage grants from the Department of Boating and Waterways in the amount of $493,000 for the construction of the new Boat Launch and Parking Lot. In addition, the Port Commission has approved $1.4 Million in capital funds to design and construct the improvements at the Pier 52 site. The Construction Contract work includes contractor mobilization and demobilization, demolition, supervision and management, materials, and equipment to complete the work as set forth in the construction documents. The projected cost estimate for this work ranges between $1.1 and $1.3 million.

Prepared by: Cliff Jarrard, Chief Harbor Engineer

THIS PRINT COVERS CALENDAR ITEM NO. **6A**

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **98-102**

WHEREAS, the Port Commission formally accepted responsibility from the San Francisco Recreation and Parks Department for managing a $295,000 grant from the California Department of Boating and Waterways under Port Commission Resolution No. 95-7; and

WHEREAS, the Port Commission executed an amendment to Grant Contract Agreement No. 93-101-229 to include the $198,000 grant to construct an off-site parking lot for the boat launch under Port Commission Resolution No. 98-53, and

WHEREAS, the Port Commission approved $1.4 Million from its 1994 Bond Refinancing Funds to be spent on the design and construction of improvements at the Pier 52 Project; and

WHEREAS, the projected cost estimate for this work ranges between $1.1 and $1.3 million; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes Port Staff to Advertise for Competitive Bids for the construction of the Pier 52 Public Boat Launch and Support Facilities Project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 13, 1998.

_____
Secretary

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MEMORANDUM

October 8, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to award Construction Contract No. 2655, "Maintenance Dredging at Pier 35 East Phase II, Pier 35 West, and Pier 80 Berths A, B, and C" to Dutra Dredging Company.

DIRECTOR'S RECOMMENDATION: AUTHORIZE THE EXECUTIVE DIRECTOR TO AWARD CONTRACT NO. 2655 TO DUTRA DREDGING COMPANY.

The Port Commission authorized the advertisement of Construction Contract No. 2655 at its September 8, 1998 regular meeting. This contract is for maintenance dredging at Pier 35 East Phase II, Pier 35 West, and Pier 80 Berths A, B, and C. The maintenance dredging work includes contractor mobilization and demobilization, surveying, dredging, dredge spoils disposal at Alcatraz; and trucking and disposal of unsuitable dredge spoil material from Pier 35 East and West to a suitable landfill. The bid documents also included Additive Bid Items for dredging and disposal of unsuitable material from Pier 80 Berths A and B, if necessary. The shipping schedule requires that dredging work start later this month.

Two (2) bids were received on September 29, 1998. A Bid Summary follows. Dutra Dredging Company was the lowest bidder at $1,840,870.80 for the Total Bid Amount, which is the sum of all Base Bid Items and all Additive Bid Items. The Total Bid Amount was used as the basis for the determination of low bid. After bids were opened, sediment test results for Pier 80 Berths A and B indicated that the dredge spoils at these berths are suitable for in-bay disposal, and, therefore, there is no need for the Additive Bid Items in this contract. The contract can be awarded for the Base Bid Items only.

THIS PRINT COVERS CALENDAR ITEM NO. 6B

However, additional unsuitable bottom sediment was found at Pier 35 East and West, requiring that the unsuitable material quantities noted in Base Bid Items UP-2 and UP-4 be increased over that noted in the bid documents. The bid documents and contract allow the Port to increase or reduce dredge quantities for all of the Bid Items. The following Cost Estimate Table indicates the current estimated material quantities and cost for all Bid Items.

Staff recommends that the Commission authorize the award of Contract No. 2655 to the lowest bidder, Dutra Dredging Company, in the amount of $1,770,565.00 plus a 15% contingency to cover uncertainties in the dredge quantity requirements. Staff requests authorization for the Executive Director to accept the work once it is complete.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-103

WHEREAS, the Port Commission authorized the advertisement of Construction Contract No. 2655 at its September 8, 1998 regular meeting; and

WHEREAS, the contract is for maintenance dredging at Pier 35 East Phase II, Pier 35 West, and Pier 80 Berths A, B, and C; and

WHEREAS, Dutra Dredging Company was the lowest bidder at $1,840,870.80 for the Total Bid; and

WHEREAS, since there is no material at Pier 80 Berths A and B unsuitable for in-bay disposal, there is no need for the Additive Bid Items in this contract and the contract may be awarded for the Base Bid Items only; and

WHEREAS, the contract includes construction mobilization requirements and approximately 270,256 cubic yards of dredge material removal and disposal; now, therefore, be it

RESOLVED, that the Port Commission authorizes the award of Contract No. 2655 to Dutra Dredging Company in the amount of $1,770,565.00, and further authorizes a 15% contingency to cover uncertainties in the quantity of dredging required, and authorizes the Executive Director to accept the work once it is complete.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 13, 1998.

_____
Secretary

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PORT OF SAN FRANCISCO

BID SUMMARY

Maintenance Dredging for Pier 35 East, Phase II, Pier 35 West and Pier 80 Berths A, B and C

Contract No. 2655 Project Engi Ed Byrne Bids Opened 29 Sep 98

				Dutra Dredging Company		Manson Construction Co
Bid Item No.	Description	Est'd Quantity	Unit /LS Price	Total	Unit /LS Price	Total
LS-1	Mobilization	1		$175,000.00		$985,000.00
UP-1	Pier 35 East, Phase II, disposal at Alcatraz	14,630	$3.28	$47,986.40	$4.00	$58,520.00
UP-2	Pier 35 East, Phase II, disposal at an upland disposal site	5,170	$35.36	$182,811.20	$45.00	$232,650.00
UP-3	Pier 35 West disposal at Alcatraz	71,605	$3.28	$234,864.40	$3.50	$250,617.50
UP-4	Pier 35 West disposal at an upland disposal site	4,195	$35.36	$148,335.20	$25.00	$104,875.00
UP-5	Pier 80 Berth C disposal at Alcatraz	49,300	$3.28	$161,704.00	$3.50	$172,550.00
UP-6	Pier 80 Berth B disposal at Alcatraz	68,600	$3.28	$225,008.00	$3.50	$240,100.00
UP-7	Pier 80 Berth A disposal at Alcatraz	62,000	$3.28	$203,360.00	$3.50	$217,000.00
	TOTAL BASE BID LUMP SUM AND UNIT PRICE BID ITEMS			$1,379,069.20		$2,261,312.50
AUP-1	Pier 80 Berth B disposal at an upland disposal site	6,860	$35.36	$242,569.60	$40.00	$274,400.00
AUP-2	Pier 80 Berth A dispoasl at an upland dispoal site.	6,200	$35.36	$219,232.00	$40.00	$248,000.00
	Total Bid			**$1,840,870.80**		**$2,783,712.50**

PORT OF SAN FRANCISCO

COST ESTIMATE FOR CONTRACT AWARD

Maintenance Dredging for Pier 35 East, Phase II, Pier 35 West and Pier 80 Berths A, B and C

Contract No.: 2655 Project Engineer: Ed Byrne Bids Opened 29 Sep 98

Bid Item No.	Description	Estimated Quantity	Unit /LS Price	Total
LS-1	Mobilization	1	$175,000.00	$175,000
UP-1	Pier 35 East, Phase II, disposal at Alcatraz	10,950	$3.28	$35,916
UP-2	Pier 35 East, Phase II, disposal at an upland disposal site	5,625	$35.36	$198,900
UP-3	Pier 35 West disposal at Alcatraz	57,300	$3.28	$187,944
UP-4	Pier 35 West disposal at an upland disposal site	16,480	$35.36	$582,733
UP-5	Pier 80 Berth C disposal at Alcatraz	49,300	$3.28	$161,704
UP-6	Pier 80 Berth B disposal at Alcatraz	68,600	$3.28	$225,008
UP-7	Pier 80 Berth A disposal at Alcatraz	62,000	$3.28	$203,360
	TOTAL BASE BID LUMP SUM AND UNIT PRICE BID ITEMS	270,256		$1,770,565
AUP-1	Pier 80 Berth B disposal at an upland disposal site	0	$35.36	$0
AUP-2	Pier 80 Berth A dispoasl at an upland dispoal site.	0	$35.36	$0

Total	**270,256**	**$1,770,565**
Contingency 15%		**$265,585**
Total Authorization with Contingency		**$2,036,150**

PORT OF SAN FRANCISCO

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MEMORANDUM

October 6, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman

FROM: Douglas F. Wong
Executive Director

SUBJECT: **Authorize Staff to Issue a Request for Proposals (RFP) for mixed-use development for Pier 24½ (Pier 24 Annex)**

DIRECTOR'S RECOMMENDATION: AUTHORIZE ISSUANCE OF A REQUEST FOR PROPOSALS FOR DESIGN, CONSTRUCTION AND LEASE OF PIER 24½

THE SITE

The Pier 24½ site consists primarily of the Pier 24 Annex Building just north of Pier 26 (see Exhibits A and B). The building contains approximately 24,000 square feet of enclosed, vacant space, which was once used for cargo warehousing and has not been occupied for several years. The site fronts on The Embarcadero and has sweeping views of the Bay, the Bay Bridge, the Ferry Building, Treasure Island, the East Bay and The Embarcadero.

Located at the foot of Harrison Street between Downtown San Francisco and the South Beach neighborhood, the area is dominated by recently completed, ongoing and pending improvement projects. The Embarcadero Roadway and pedestrian Promenade has been improved directly in front of Pier 24½ providing door-front transit and pedestrian access to the site. Pacific Bell Ballpark is under construction and will draw thousands of fans along The Embarcadero past the Site when completed in April 2000. And the City's newest waterfront amenity, Rincon Park, will be constructed just to the north of the Site, increasing the vitality and visibility of the Site environs.

Pier 24½ is part of the "Rincon Pier Mixed Use Opportunity Area" of the Port's Waterfront Plan. The Waterfront Plan states that the larger Opportunity Area, which includes Piers 26 and 28, provides excellent opportunities for entertainment activities to

serve the general public, nearby local residents and downtown employees, as well as recreation services (e.g. bike and skate rentals) to people enjoying the park and Embarcadero Promenade.

THE OPPORTUNITY

In light of the existing and planned improvements for this area of the Waterfront, Port staff recommends that the Port solicit proposals from qualified developer/operators to finance, design, construct, maintain and operate a mixed use development (the "Development") consistent with the Port's recently adopted *Waterfront Land Use Plan* ("Waterfront Plan"). The Waterfront Plan lists the following uses or a combination thereof, as acceptable for the site: Assembly and entertainment, museum, retail (including restaurant) water taxi, public access and open space. Exhibit C includes a more detailed definition of each of these uses.

Given the available square footage within the building (approximately 24,000 s.f.), a mix of two or more of the uses permitted under the Waterfront Plan could be expected. For example, a museum or interactive exhibit space could be accompanied by related retail and/or restaurant uses. Alternatively, a night club/restaurant combination could be proposed. The Port would entertain a variety of proposals provided that the uses are acceptable per the Waterfront Plan and the Project Objectives for development of the site are achieved. The site could be used for one or more distinct operations under a lease with a single developer.

The project should create an outstanding destination on the waterfront that will take full advantage of the spectacular Bay and City views, the adjacent Rincon Park, and activate and enliven the waterfront. Extensive experience in the financing, development and operation of the entertainment, museum, restaurant and/or retail operations and a demonstrated ability to construct the necessary building improvements would be required.

PROJECT OBJECTIVES

The development of Pier 24½ should address the following objectives:

- Promote public enjoyment of and access to the waterfront by providing a destination that welcomes diverse users, including Downtown workers, neighborhood residents as well as other San Franciscans and visitors to the waterfront.

- Generate activity in the area during the evenings and weekends to complement the weekday office uses in the adjacent Downtown buildings.

- Help activate the adjacent Herb Caen Way (waterfront promenade).

- Maximize Port revenue from the site.

- Provide architectural design of exemplary quality that reflects and enhances the waterfront setting.

- Provide seismic upgrades to the Pier 24 Annex building and substructure.

- Provide a project consistent with the policies, standards and design criteria in the Waterfront Plan and the Waterfront Design & Access Element.

PROPOSED RENT AND KEY LEASE TERMS

The actual terms of the lease will be negotiated with Port Staff and are subject to final approval by the Port Commission and the San Francisco Board of Supervisors.

Base Rent
Rather than set a minimum base monthly rental rate, the Port is requiring Respondents to propose a base monthly rate comparable to like situations in the market. Rental adjustments must also be proposed. A period of rent abatement for the purpose of constructing improvements may be included.

Percentage Rent
Proposals must also include a Percentage Rent payable to the Port on gross receipts for food, beverages, entertainment and merchandise. The percentage rent rate is not being dictated by the Port but should be comparable to like situations in the market.

The higher of the Base Rent or the Percentage Rent would be payable to the Port. In any month in which the Percentage Rent does not exceed the Base Rent, only the Base Rent would be payable to the Port.

Term
Proposals must include a proposed initial term plus option periods, if any, based on the cost of tenant improvements and comparable situations in the market. The initial term of the lease should not exceed 25 years. Additional 5-year options could be available provided that upon each exercise of option, the Base Rent and Percentage Rent would be adjusted upward.

SELECTION

Proposals submitted to the Port would be analyzed to select the most qualified Respondent. Selection criteria would include: the experience and reputation of the

Respondent, the quality and uniqueness of the development concept, the financial viability of the proposal, economic return to the Port, the experience and qualifications of the design consultants, the quality of the conceptual design for the building and site, and the organization and management of the development team. Port staff would then enter into an exclusive right to negotiate agreement, during the term of which Port staff would negotiate a lease with the selected respondent, based on the Port's standard lease format. Port staff also would negotiate a lease disposition and development agreement governing, among other things, regulatory approvals, design review, and construction and financing of the project.

PROJECT APPROVALS

Museum, assembly and entertainment, retail and restaurant, public access and open space and water taxi uses proposed for the Pier 24 Annex Building are included in the Waterfront Plan which has been approved by the Port. Nevertheless, the specific plans for the Development will require various permits and approvals, and the selected developer will be responsible for determining which permits and approvals will be required for the construction and operations proposed at the Site and for obtaining such permits and approvals. The following information describes some of the permits that may be required.

Port of San Francisco
The Commission must approve exclusive negotiations with the selected Respondent and must approve the final ground lease and related documents for the development and lease of the Site. In addition, the Port will issue the building permits for the project.

San Francisco Board of Supervisors
The ground lease will be subject to Section 7.402-1 of the San Francisco City Charter, which requires approval by the San Francisco Board of Supervisors for leases in excess of ten years or one million dollars in total revenue.

Design Review
The design of the project must be reviewed and approved by the Port. In addition, the Port expects to invite and receive comments on the design of the project from the Rincon Point-South Beach Citizens Advisory Committee, the Planning Department and San Francisco Bay Conservation and Development Commission (BCDC). An interagency Design Review process will be established to facilitate a coordinated review of the proposed design by the respective government agencies.

Environmental Review
The successful Respondent will be required to submit an Environmental Evaluation application with the Department of City Planning, Office Environmental Review (OER). Respondents must comply with all CEQA requirements before the Port Commission or the Board of Supervisors will approve or execute the Lease.

A Program EIR was certified for the Waterfront Plan in 1997 which contains analyses that may be relied upon by OER when evaluating the need for further environmental analysis for the proposed project. However, additional environmental review may be required by OER or by BCDC if: a) the project varies substantially from that which was reviewed in the Waterfront Plan Program EIR; b) new information becomes available; or, c) changed circumstances occur that could cause adverse environmental impacts not analyzed in this EIR or subsequent EIR's. Any additional environmental review would be the responsibility of OER, which would rely upon information and assistance from the selected Respondent.

Bay Conservation and Development Commission
The Development will require a permit from the San Francisco Bay Conservation and Development Commission (BCDC). The Port will be a co-applicant for the BCDC permit; however, the successful Respondent will be solely responsible for compliance with all BCDC requirements.

Liquor, Food Service and Business Licenses
Respondents should investigate, and will be solely responsible for obtaining, a liquor license(s) from the California Department of Alcoholic Beverage Control and any other required licenses including those from the City's Department of Public Health and Treasurer/Tax Recorder.

NEXT STEPS

If authorized, Port staff would proceed with the development solicitation process according to the following schedule:

Port Commission Authorization to Issue RFP	October 13, 1998
Issue RFP	October 19, 1998
Outreach and Advertising	October 19, 1998
Deadline for Submittals of Proposals	January 11, 1998
Recommendation to Port Commission for action Approving Selected Development Team	February 1999
Action by Port Commission to Approve Lease Disposition and Development Agreement and Lease	July 1999

Prepared by Kari Kilstrom, Development Project Coordinator

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-104

WHEREAS, Under the City and County of San Francisco Charter, Section B3.581, the Port of San Francisco has the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, the Port owns certain properties known as "Pier 24 ½"; and

WHEREAS, the Port Commission now wishes to proceed with the renovation of Pier 24 ½ and the development of a mixed-use project consistent with the Port's Waterfront Land Use Plan; and

WHEREAS, Port Commission policy encourages competitive bidding of retail opportunities unless impractical or impossible; now, therefore, be it

RESOLVED, that the Port Commission hereby authorizes and directs Port staff to issue a request for proposals for design, construction and lease of the Pier 24 ½ site between Piers 24 and 26 in accordance with the terms set forth in the memorandum to Port Commission for item 7A of the Port Commission's October 13, 1998 meeting, a copy of which is on file with the Port Commission Secretary, and in such form as is approved by the Executive Director, or his designee, and the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 13, 1998.

_____
Secretary

Exhibit A

Pier 24 ½ Project Site

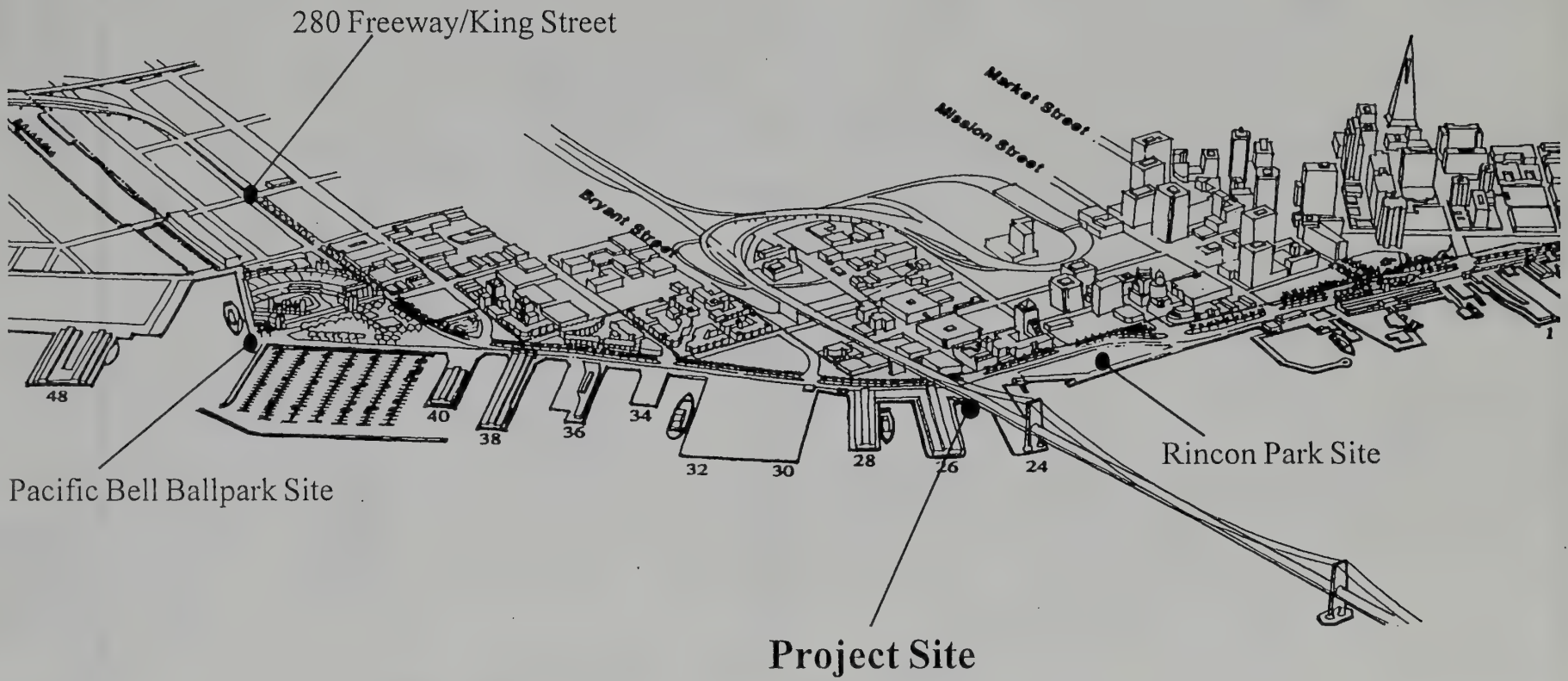
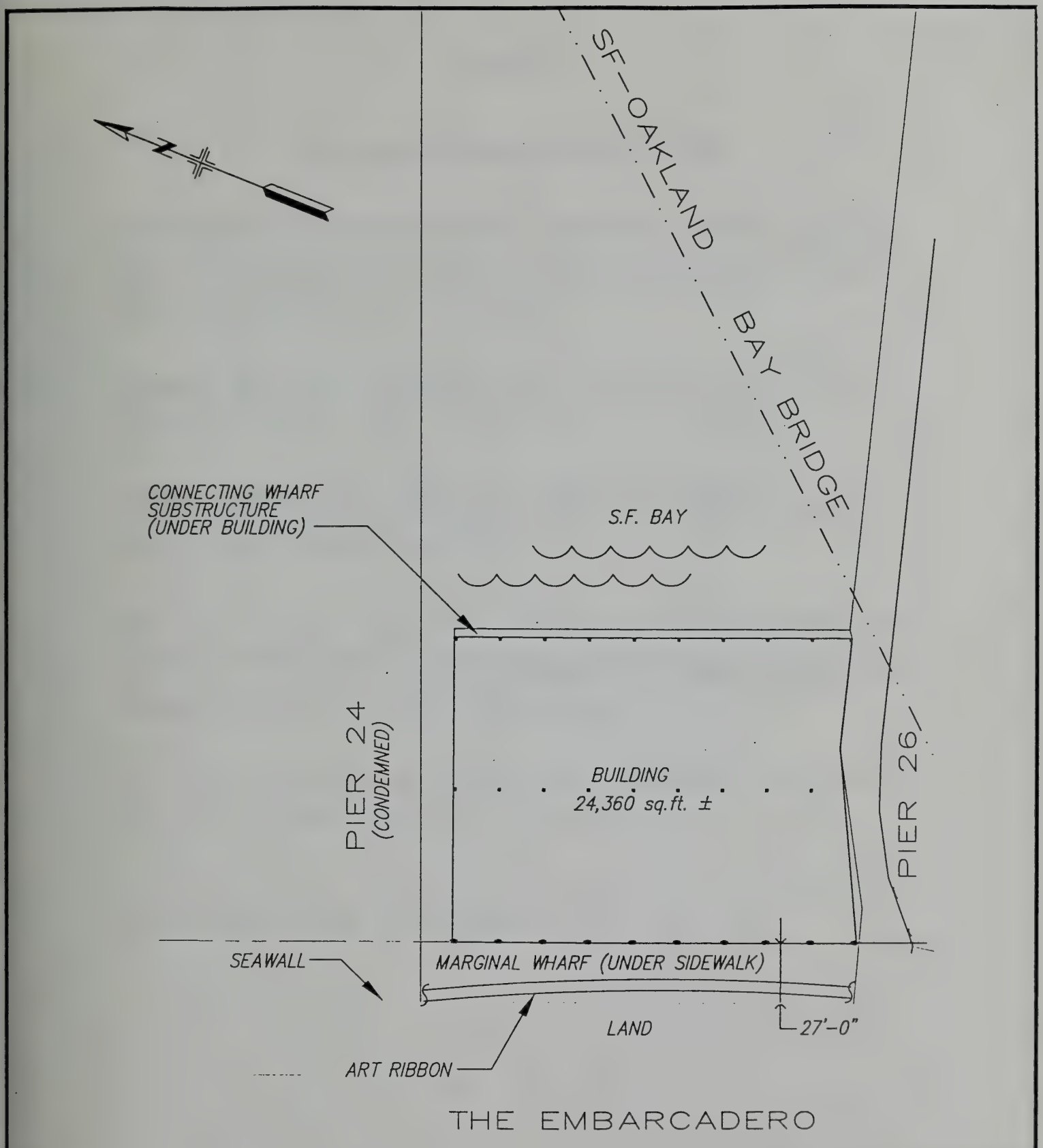


EXHIBIT B



PORT OF SAN FRANCISCO SAN FRANCISCO PORT COMMISSION DEPARTMENT OF ENGINEERING	PIER 24 1/2	IN CHARGE OF: ED BYRNE DRAWN BY: S.C. REF. FILES: – DRAWING NO. P24ANNEX DATE: 6 OCT 98 SCALE: 1" = 60' NO. 1 OF 1

FILE: G:\SCHU\ACADDWG\P24ANNEX

EXHIBIT C

Pier 24 Annex: Acceptable Uses and Definitions

Assembly and Entertainment – Facilities for entertainment and attractions including but not limited to: band shells, auditoriums, theaters (cinemas and live performances), night clubs, amusement parks, conference, convention and event facilities, exhibition halls, public markets and children's entertainment.

Museums – Includes but is not limited to: facilities for exhibits on San Francisco history, maritime history, ongoing exhibitions, cultural and exhibit space, etc.

Retail – Retail sales of goods and services, including but not limited to: restaurants and other eating and drinking establishments, shops, personal services, dry goods, public and other markets and retail outlets.

Public Access – Areas or features which are open to the public, often provided as part of new development, including but not limited to: esplanades, boardwalks, pedestrian access to piers, small plazas, visual or informational displays, kiosks, signage, public fishing and viewing areas and related public amenities.

Open Space – Includes but is not limited to: parks, wildlife habitat, wetlands, large plazas, tot lots, fishing piers and related public amenities.

Source: Excerpts from the Waterfront Land Use Plan

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
www.sfport.com

MEMORANDUM

October 7, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to Issue Request for Bids to Finance the Lease/Purchase of Equipment

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

In 1997/98, the Maintenance Department received budget approval to purchase approximately $180,000 in equipment, and to finance the equipment through a lease/purchase mechanism. The purpose for doing the lease/purchase was to reduce the budget expense to approximately $46,000 per year over the next five years, while allowing Maintenance to purchase the much needed equipment as soon as possible. The following equipment was approved:

Equipment	**Estimated Cost**	**Reason Needed**
Hydrostatic Roller	$ 15,400	To replace 12 year old roller.
22" Containment Boom	13,200	New boom required by BCDC to contain toxic spills.
Orbital Pipe Cutter	16,500	Will allow for quicker repair of under Pier pipes.
Aerial Man Lift	36,300	Replacement lift for existing truck.
Auto Diagnostic Equipment	11,000	New equipment to meet current smog standards.
2 Diesel Generators	41,500	Replacement for old trailer-mounted emergency generators.
10' Heavy Duty Boat	48,400	Replacement for existing boat which is used for depth surveying and moving vessels.
Total Estimated Cost	$182,300	

THIS PRINT COVERS CALENDAR ITEM NO. 8A

Maintenance staff has now issued the purchase orders for this equipment and is ready to put the lease/purchase financing in place. Therefore, Port staff is requesting authorization to issue a Request for Bids to finance this equipment through a master lease/purchase agreement. The term of the financing for each piece of equipment will be 5 years. The master agreement will not exceed a total equipment purchase cost of $200,000. Each bidder will be asked to bid an index. The rate on each piece of equipment will be set once the equipment is received, accepted, and funded. We are asking each bidder to specify what the rate would have been on October 27 (three days before the bids will be due) and the lowest bid for that day will be awarded the contract.

Based on a current 5-year tax-exempt interest rate of 5.1247%, if all of the equipment was funded today, the semi-annual payments will be approximately $22,925.44, for a total 5-year cost of $229,254.40. A sample payment schedule is attached.

In addition, we are requesting Port Commission approval to allow the Port Director to enter into a Lease/Purchase Agreement with the winning bidder. A copy of the Lease/Purchase Agreement in substantially complete form is attached for your review.

Prepared by: Stephanie Downs, Finance Manager

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-99

WHEREAS, The Port Commission has approved the lease/purchase equipment in the 1998/99 operating budget; and

WHEREAS, The equipment to be leased/purchased is designated as follows:

1. Hydrostatic Roller
2. 22" Containment Boom
3. Orbital Pipe Cutter
4. Aerial Manlift
5. Vehicle Testing Equipment
6. 2 Diesel Generators
7. 10' Heavy Duty Boat; and

WHEREAS, The approximate cost of the equipment including tax and delivery charges is $200,000; now, therefore, be it

RESOLVED, That the Port Commission authorizes the issuance of a Request for Bids to lease/purchase equipment; and, be it further

RESOLVED, That staff is directed to award the bid to the bidder with the lowest cost of financing; and, be it further

RESOLVED, That the Executive Director is hereby authorized to enter into a Lease/Purchase Agreement with the winning bidder, for an amount not to exceed $200,000, substantially in the form attached hereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 13, 1998.

_____
Secretary

PORT OF SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO

REQUEST FOR BIDS TO LEASE FINANCE EQUIPMENT

Deadline for Submission: 11:00 AM – October 30, 1998

Ferry Building, Suite 3100, San Francisco, CA 94111

San Francisco Port Commission
City and County of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

CONTRACT DOCUMENTS

The contract documents pertaining to this contract proposal are as follows:

I. Instructions
II. Bid Sheet
III. Lease/Purchase Agreement

I. INSTRUCTIONS

Bid for leasing of equipment with an option to purchase will be based on the conditions listed below:

A. Index

Index quoted must be firm and will remain in effect throughout the Acquisition Period as specified in the Lease/Purchase Agreement.

B. Low Bid Determination/Award

Bid will be awarded based on the lowest cost of funds to the San Francisco Port Commission (the "Port"). Bids will be evaluated based on the lowest actual rate quoted for Tuesday, October 27, 1998 for a 5 year lease term.

C. All Costs to be Financed

The lessor will be required to finance all transaction costs, including all of the lessor's costs, finance costs, administrative costs, taxes, delivery costs, and all other costs whatsoever that are required relative to this transaction.

D. List of Equipment to be Leased

The following is a list of equipment, the estimated cost of the equipment, and the lease term for such equipment that the Port expects to lease purchase under this contract:

Equipment	**Estimated Cost**	**Term**
Hydrostatic Roller	$15,400	5 years
22" Containment Boom	13,200	5 years
Orbital Pipe Cutter	16,500	5 years
Aerial Manlift	36,300	5 years
Vehicle Testing Equipment	11,000	5 years
2 Diesal Generators	41,500	5 years
20' Heavy Duty Boat	48,400	5 years

E. Amortization Schedule

Pursuant to the attached form of Lease/Purchase Agreement, a separate lease payment schedule will be attached to the Lease/Purchase Agreement for each piece of equipment or group of equipment at the time the equipment has been received, accepted and funded.

F. Payments

Payments are to be made semi-annually in equal installments of principal and interest on the lease payment dates specified on the payment schedule certificate over the lease term specified herein.

G. Lease Rate Determination

Bidder is asked to bid an index for a 5-year lease term. Please quote your index rate source (i.e. Wall Street Journal, Bloomberg, etc.). In addition, please quote the rate that would be offered on Tuesday, October 27, 1998 as if equipment was to be funded on that day, based on the index quoted.

H. Opening of Bids

Bids may be submitted no later that 11:00 a.m. on Friday, October 30, 1998. Bids must be clearly marked "Bid for Equipment Lease Financing."

Bids will be opened by the Port at 11:00 a.m. on Friday, October 30, 1998 in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after tabulation.

I. Rejection of Bids

The Port reserves the right to reject any and all bids.

J. Contract Interpretation .

Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract.

K. Failure to Execute

It is understood and agreed by the Bidder, that should its bid be accepted and the award be made, and the bidder fails or refuses to execute and return the contract to the Port within thirty (30) days from the date of award, the Port may, at its option, determine that this bidder has abandoned its bid. Thereupon, the award of said contract of this bidder shall be null and void for the bidder's failure to execute said contract.

L. MBE/WBE/LBE Ordinance

San Francisco Administrative Code Chapters 12B and 12D, as amended, are hereby incorporated by reference as though fully set forth. Copies of both Chapters 12B and 12D and their implementing Rules and Regulations are available upon request at the

Human Rights Commission office: 25 Van Ness, #800, San Francisco, CA 94102 or by calling (415) 252-2500..

(1) The Rating Preference Pursuant to Chapter 12D, the following rating preference will be in effect for the award of this project. The rating preference applies to each phase of the selection process. The application of the rating preference is as follows:

(a) A five percent (5%) preference to:
(i) a local business; or
(ii) a joint venture with local MBE or local WBE participation which equals or exceeds thirty-five percent (35%) but is under forty percent (40%); or
(iii) where a joint venture is composed of only local businesses with no local MBE or WBE participation or where the local MBE or local WBE participation is less than thirty-five percent (35%).

(2) A seven and one-half percent (7.5%) preference to a joint venture with local MBE or WBE participation which equals or exceeds forty percent (40%) but is less than fifty-one percent (51%).

(3) A ten percent (10%) preference to:
(a) a local MBE or local WBE; or
(b) a joint venture with local MBE or local WBE participation, which equals or exceeds fifty-one percent (51%).

A joint venture shall receive the aforementioned appropriate rating preference when the MBE or WBE partner is an active partner in the joint venture and performs the work, manages the job and takes financial risks in proportion to the required level of participation stated in the RFP response.

Businesses eligible for the MBE/WBE/LBE rating preference are only those businesses that are local, economically disadvantaged Minority/Women owned and local, economically disadvantaged non-minority/women owned businesses.

M. Procedures for Applying for Rating Preference

All respondents are to complete and return with their proposal HRC Forms 1, 2A, 3, 4, 5A and 5B (as applicable). If you have any questions concerning the program or the HRC forms, please call Preston Tom at (415) 274-0498.

N. Fax

Contract Bids that are sent by "Fax" transmission are not acceptable, and will not be entertained.

O. Contact

For further information, contact Stephanie Downs, Finance Manager, (415) 274-0442.

LEASE/PURCHASE AGREEMENT

By and Between

[_____]

"Lessor"

and

CITY AND COUNTY OF SAN FRANCISCO

"City"

Dated as of _____ __, 19

LEASE/PURCHASE AGREEMENT

THIS LEASE/PURCHASE AGREEMENT, dated as of _____ __, 19__ ("**Agreement**"), by and between _____, as lessor ("**Lessor**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, as lessee ("**City**"), acting by and through its **PORT COMMISSION** (the "**PORT**").

BACKGROUND

A. The Port desires to enter into a lease/purchase agreement for the purpose of leasing certain equipment and Lessor desires to lease certain equipment to the Port; and

B. The City is authorized under the Constitution and the laws of the State of California to enter into this Agreement for the purposes set forth herein; and

C. All acts, conditions and matters required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Agreement do exist, have happened and have been performed in regular and due

time, form and manner as required by law and the parties hereto are now duly authorized to execute and enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties to this Agreement agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. For purposes of this Agreement and in addition to the terms defined elsewhere in this Agreement, the following terms have the meanings given below unless the context clearly requires otherwise:

"**Acquisition Period**" means the period commencing on the date of this Agreement and ending on the earlier of eighteen months after execution of this Agreement or the leasing of Equipment with the aggregate Purchase Price Two Hundred Thousand Dollars ($200,000).

"**Agreement**" means this Lease/Purchase Agreement as the same may be amended in accordance with its terms.

"**Business Day**" means any day other than a City holiday, a Saturday, Sunday or day upon which banks in the State are authorized or required to be closed.

"**City Attorney**" means the City Attorney of the City or any duly authorized deputy of the City Attorney.

"**City Representative**" means the authorized representative of the Port.

"**Commencement Date**" for any item or items of Equipment means the date the Lessor funds the acquisition of such Equipment.

"**Equipment**" means the personal property, including all software and documentation related thereto, leased by the Lessor to the City pursuant to this Agreement.

"**Index**" means _____.

"**Lease Acceptance Certificate**" means the certificate substantially in the form attached hereto as Exhibit A to be delivered by the City to the Lessor in connection with each leasing of Equipment hereunder.

"**Lease Payment**" means the lease payment for any item of Equipment that the City is required to make to the Lessor under this Agreement as set forth in the applicable Payment Schedule Certificate.

"**Lease Payment Date**" means the date the Lease Payment for any item of Equipment is due as set forth in the applicable Payment Schedule Certificate.

"**Lessor Representative**" means _____ of the Lessor or other officer designated by such officer and authorized to act on behalf of the Lessor under or with respect to this Agreement and any other agreements related hereto and pertinent to the action to be taken by such officer.

"**Notice of Intent to Finance**" means a written notice sent by the City to Lessor, notifying the Lessor of the City's intent to finance the acquisition of the Equipment listed on such notice.

"**Opinion of Counsel**" means the opinion substantially in the form attached hereto as Exhibit C to be delivered by the City Attorney to the Lessor upon execution of this Agreement.

"**Parties**" means the Lessor and the City.

"**Payment Schedule Certificate**" means the certificate substantially in the form attached hereto as Exhibit B to be delivered by the City to the Lessor in connection with each leasing of Equipment hereunder.

"**Person**" means an individual, partnership, corporation, association, trust or any other legal entity.

"**Purchase Price**" means the Lessor's actual cost for acquiring any item of Equipment hereunder, including in such cost, if so requested by the City, the cost and expense of delivering the Equipment to the City.

"**State**" means the State of California.

ARTICLE II

PURPOSE

Section 2.01 Purpose. This Agreement provides the basic terms and conditions by which the City may lease Equipment from the

Lessor. It is the intent of both parties to this Agreement that the Equipment to be leased hereunder shall consist of personal property only and not real property or fixtures.

Section 2.02 List of Equipment. A list of the equipment that the Port intends to lease pursuant to this Agreement is set forth in Schedule 1, attached hereto and incorporated herein. The actual total cost, number of units and lease term for any item or items of Equipment leased hereunder may vary from the specifications set forth in Schedule 1, provided the aggregate total cost for the Equipment financed hereunder shall not exceed $200,000.00 and the lease term for any item of Equipment leased hereunder shall five years as set forth in the applicable Lease Acceptance Certificate.

ARTICLE III

ACQUISITION; DELIVERY AND ACCEPTANCE

Section 3.01 Acquisition of Equipment. At any time during the Acquisition Period, the City Representative may notify the Lessor of its intent to finance the acquisition of any Equipment by delivering to the Lessor a Notice of Intent to Finance specifying (i) the Equipment the City desires to lease, (ii) the estimated purchase price of each item of Equipment, including in such cost, at the City's option, the cost and expense of delivery of the

Equipment to the City and (iii) the name of the vendor of the Equipment. The aggregate purchase price of all the Equipment listed in any Notice of Intent to Finance must be equal to at least Ten Thousand Dollars ($10,000) otherwise Lessor shall not be obligated to finance the acquisition of any of the Equipment listed in the Notice of Intent to Finance.

Section 3.02 Delivery of Equipment. The City shall be solely responsible for coordinating the delivery of the Equipment to the appropriate location. All transportation costs and other expenses, if any, incurred in connection with the delivery of Equipment shall be the responsibility of the City. If requested by the City, any such costs will be included as part of the Purchase Price to be financed.

Section 3.03 Acceptance of Equipment.

(a) In connection with the leasing of the Equipment listed in each Notice of Intent to Finance, the appropriate officials of the City shall execute and deliver all the documents listed below each dated the Commencement Date:

(1) Lease Acceptance Certificate;

(2) Payment Schedule Certificate;

(3) An invoice stating (i) the name of vendor, (ii) the Equipment description, (iii) the Purchase Price for each item of Equipment, (iv) the required form of payment (e.g., cashier's check, wire, etc.) and (v) the place where payment must be delivered.

(b) The City's failure to deliver the above-referenced documents shall not constitute an Event of Default hereunder.

Section 3.04 Funding of Acquisition; Documents.

(a) On the fifth Business Day immediately following the delivery of all the originally executed documents listed in Section 3.03(a) hereof, Lessor shall fund the acquisition of all the Equipment listed in the Lease Acceptance Certificate. For purposes of this Section, "**delivery**" shall mean the day documents are released by the City if the City caused the documents to be delivered by overnight courier. **[If Lessor is located within the City, messenger service should be included.]** If the City uses any

other means of delivery, then "**delivery**" shall mean the day that the Lessor actually receives all the documents.

(b) Within two (2) Business Days after the Commencement Date, the Lessor shall deliver to the City satisfactory evidence of payment of the aggregate Purchase Price of all the Equipment listed in the applicable Lease Acceptance Certificate.

ARTICLE IV

TERM

Section 4.01 Agreement Term. Except as otherwise provided herein, the term of this Agreement shall commence upon the date hereof and shall terminate upon the payment by the City of all Lease Payments required hereunder. Notwithstanding the foregoing, the City's right and the Lessor's obligation to finance the acquisition of any new Equipment shall not extend beyond the last day of the Acquisition Period.

ARTICLE V

LEASE PAYMENTS

Section 5.01 Lease Payments.

(a) Upon the Commencement Date for each item of Equipment, the City shall be obligated to make the Lease Payments for such Equipment on the dates and in the amounts set forth in the applicable Payment Schedule Certificate. The Parties agree that Lease Payments shall be equal installments consisting of principal and interest components payable on such dates as set forth in the applicable Payment Schedule Certificate. The City shall make the applicable Lease Payment on each Lease Payment Date for all Equipment leased hereunder until the outstanding Lease Payment balance for all the Equipment is paid in full. Each Lease Payment shall be paid in lawful money of the United States of America, by warrant drawn on the Treasury of the City.

(b) At least fifteen (15) days prior to the Lease Payment Date for each item of Equipment leased hereunder, the Lessor shall mail to the City Representative for each item of Equipment a statement setting forth the total amount due and payable on such Lease Payment Date. Should the Lessor fail to receive any Lease

Payment when due and payable, the Lessor shall within five (5) days of the Lease Payment Date send written notice thereof to the City and the City Representative for such Equipment. Notwithstanding the foregoing requirement, the City's receipt of the foregoing billing statements and notices from the Lessor is not a condition precedent to the City's obligation to make the required Lease Payments when due and payable.

(c) For each item of Equipment, a fixed rate of interest shall be established on the Commencement Date and specified in the applicable Lease Payment Schedule. Such interest rate shall be effective through the term of this Agreement for such Equipment. [The applicable interest rate shall be calculated as follows: TO BE DETERMINED]

Section 5.02 Lease Payment Not a Debt. The City shall pay Lease Payments and any other payments required under this Agreement exclusively from legally available funds. The City intends, and the Lessor understands, that the obligations of the City to make any and all Lease Payments and other additional payments shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements

concerning the creation of indebtedness by the City, nor shall any terms or conditions contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

Section 5.03 Subject to Appropriation.

(a) Through its officers and employees, the City shall make timely and proper application for, and shall use its best efforts to obtain, such further appropriations of funds as may be necessary to perform the City's obligations under this Agreement. If for any budgetary period of the City, the City fails to appropriate sufficient funds for the payment of all Lease Payments during that budgetary period, then this Agreement shall terminate at the end of the last fiscal period of the City for which funds have been appropriated for the Lease Payments. Upon the termination of this Agreement hereunder, the City shall immediately surrender possession of all the Equipment leased by the City to Lessor. The termination of this Agreement for non-appropriation shall not constitute an Event of Default under this Agreement.

(b) In the event of a termination of this Agreement for non-appropriation, Lessor shall have the right to repossess all the Equipment without being subject to an action for trespass,

conversion or the recovery by the City of any sums previously received under this Agreement. The proceeds of any sale or leasing of any Equipment repossessed pursuant to this Section 5.03 will be applied to the payment of the unpaid balance of the City's obligations under this Agreement. Should the amount received by the Lessor from such sale be less than the unpaid balance under the Agreement, the Lessor shall not have the right to proceed against the City for the remaining balance.

Section 5.04 Option to Purchase. On any Lease Payment Date, the City shall have the right to purchase all or part of the Equipment by sending to the Lessor written notice thereof ninety (90) days prior to the Lease Payment Date for the Equipment that Lessor intends to purchase. In such notice, the City shall specify the Equipment to be purchased and the Lease Payment Date the City desires to purchase the Equipment. The City shall be obligated to pay on the designated Lease Payment Date the total unpaid Lease Payments for such Equipment constituting principal plus accrued interest to the date the City has designated as the purchase date.

Section 5.05 Abatement of Lease Payments. Lease Payments for any item of Equipment shall be abated during any period in which, by reason of any damage, theft or destruction (exclusive of

condemnation which is provided for hereinafter), there is substantial interference with the City's use and possession of such Equipment. The amount of abatement shall be such that the resulting Lease Payments for such Equipment represent fair consideration for the use and possession of the portion of the Equipment as to which such damage, theft or destruction does not substantially interfere with the City's use and possession. The abatement shall be for the period commencing on the date of such damage, theft or destruction and ending on the date of completion of the work or repair or replacement of the damaged, stolen or destroyed portion of the Equipment.

Section 5.06 Guaranteed Maximum Costs.

(a) The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Lessor to perform services or to provide materials, equipment and supplies that would result in Lessor performing services or providing materials, equipment and supplies

that are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement unless the Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Lessor for services, materials, equipment or supplies that are provided by Lessor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement and which were not approved by a written amendment to the Agreement having been lawfully executed by the City.

(c) The City and its employees and officers are not authorized to offer or promise to Lessor additional funding for the Agreement which would exceed the maximum amount of funding provided for in the Agreement for Lessor's performance under the Agreement. Additional funding for the Agreement in excess of the maximum provided in the Agreement shall require lawful approval and certification by the Controller of the City. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties of the City. The City represents and warrants to the Lessor as of the date hereof that:

(i) The City is a municipal corporation duly organized and existing under its Charter and the Constitution of the State.

(ii) The City is authorized under its Charter and the Constitution of the State to enter into this Agreement, the transactions contemplated hereby and to perform all its obligations hereunder.

(iii) This Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally, by

the application of equitable principles if equitable remedies are sought and by the limitations on legal remedies against municipalities in the State.

(iv) While any Equipment is being leased by the City from the Lessor, such Equipment shall be used by the City only for the purpose of performing one or more governmental functions of the City consistent with the permissible scope of the City's authority.

Section 6.02 Representations and Warranties of Lessor. Lessor represents and warrants to the City as of the date hereof that:

(a) Lessor is a for-profit [**type of entity**] organized and existing under and by virtue of the laws of the [**insert State**] [**include the following if not a California entity:** "and is qualified to do business in the State."]

(b) The Lessor is duly authorized to enter into this Agreement and the transactions contemplated hereby and to perform all its obligations hereunder.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement against the Lessor, and this Agreement constitutes the legal, valid and binding obligation of the Lessor, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

ARTICLE VII

EQUIPMENT

Section 7.01 Title.

(a) With respect to any Equipment, title to the Equipment and any and all repairs, replacements or modifications thereto shall be retained by the Lessor except for those additions to such Equipment made by the City and which may be removed without damaging such Equipment. The City shall not have any right, title or interest in the Equipment or in any additions, repairs, replacements or modifications thereto except as expressly set forth herein.

(b) Upon the purchase of any item of Equipment pursuant to Section 5.04 hereof or upon full payment of all the Lease Payments due with respect to any item of Equipment under this Agreement, all of the Lessor's right, title and interest in and to such Equipment, and any improvements or additions to such Equipment, shall be automatically transferred directly to the City, free and clear of all liens, encumbrances and interests of the Lessor, without the need or requirement of any further act to accomplish such transfer. If necessary or convenient to accomplish the transfer of title of any Equipment, the Lessor shall execute and deliver any other documents, certificates or statements in connection with such transfer upon a written request of the City.

Section 7.02 Other Liens. The City will keep the Equipment and all parts thereof free from judgments and materialmen's and mechanics' liens and free from all claims, demands, encumbrances and other liens of whatever nature or character, and free from any claim or liability that might hamper the City in conducting its business or utilizing the Equipment (collectively, the "**Liens**"). Should a Lien attach to any Equipment, the Lessor shall have the right to take any necessary steps to defend against any and all actions or proceedings questioning or threatening the validity of the Lessor's security interest in the Equipment by providing the

City twenty (20) days' written notice to comply therewith; provided, however, that, in defending against any such actions or proceedings, the Lessor shall not in any event be deemed to have waived or released the City from liability for or on account of any of its agreements and covenants contained herein, or from its liability hereunder to defend the validity hereof and to perform such agreements and covenants.

Section 7.03 **Personal Property**. During the term of this Agreement, the Equipment shall remain personal property and shall not be deemed to be affixed to or a part of real property on which the Equipment may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter becomes in any manner physically affixed or attached to real property or any building thereon.

Section 7.04 **Maintenance of Equipment by City**. The City agrees that, at all times during the term of this Agreement, the City will, at the City's own cost and expense, maintain, preserve and keep all the Equipment, and every part thereof, in good operating order, repair and condition and that the City will from time to time make or cause to be made all necessary and proper repairs, including replacement of worn or damaged parts or

components. The Lessor shall have no responsibility in any of these matters or from the making of improvements or additions to the Equipment.

Section 7.05 Alterations, Additions and Attachments. Lessor hereby agrees to allow the City to add and attach to the Equipment such additional equipment, facilities or fixtures as the City may subsequently acquire (exclusive of repair, service replacement parts, which do not constitute new equipment, etc.) notwithstanding the form of financing that the City might use, which additional equipment facilities, or fixtures shall not be a part of or subject to this Agreement, unless by express written amendment.

Section 7.06 Removal of Alterations, Additions, Attachments. In the event title to the Equipment reverts to Lessor, the City, at its own expense, will remove all alterations, additions and attachments and repair the Equipment as necessary so as to return the Equipment to the condition in which it was furnished, reasonable wear and tear excepted.

Section 7.07 Return of Equipment. Upon rightful demand of the Lessor for the Equipment, the City shall deliver possession of the Equipment to the Lessor in the condition in which the Equipment

is required to be maintained according to this Agreement. In such event, the City shall deliver, at its expense, the Equipment to the Lessor at a location designated by the Lessor; provided that such location, shall be within City limits. If the Lessor desires to have the Equipment delivered to a location beyond the City limits, then the Lessor shall be responsible for collecting the Equipment from the City and delivering the same to such location, and Lessor shall be responsible for such delivery costs.

Section 7.08 Quiet Enjoyment. The City shall be entitled to possess and use the Equipment during the term of this Agreement without interruption by the Lessor. Any Equipment acquired under this Agreement may be operated at any time at the convenience of the City (exclusive of time required for preventive maintenance, remedial maintenance and/or approved engineering changes). No restrictions shall be imposed as to consecutive hours, length of personnel shifts, etc. The City may make any Equipment available to any other users under conditions where such use is supervised by the City and such Equipment is used for governmental purposes.

Section 7.09 Liability of Lessor; Indemnification. In the event that the Lessor is required to perform work at the City's location and such work is performed by Lessor, its agents,

officers, employees, subcontractors or assignees, the Lessor shall (i) maintain such bodily injury and property damage liability insurance as necessary to protect itself from claims arising out of performance of this Agreement, and (ii) indemnify and hold harmless the City, its departments, agencies, agents, employees and designated representatives from any and all claims, suits, actions, liabilities, and costs of any kind, including attorney's fees for bodily injury and damage to real or personal property arising from acts or omissions of the Lessor, its agents, officers, employees, subcontractors or assignees.

Section 7.10 Taxes and Other Charges.

(a) The City has represented to the Lessor that all the Equipment shall be used for governmental purposes; and, therefore, the City expects all the Equipment to be exempt from all taxes presently assessed and levied with respect to personal property. If any Equipment is, or becomes, subject to taxation in any form (except for income or franchise taxes of the Lessor), the City shall pay during the term of this Agreement, when due, all taxes and other charges of any kind whatsoever that may at any time be

lawfully assessed or levied against the Equipment, including charges for electricity, gas, steam, water, heat, power and utility incurred in the operation, maintenance and use of the Equipment.

(b) The City's obligation to pay any of the foregoing amounts shall be subject to the availability of appropriations for such amounts. The City may, at its expense, in good faith contest any such taxes, assessments and other charges in any reasonable manner which does not, in the opinion of independent counsel, adversely affect the right, title and interest of Lessor in and to any item of the Equipment or its rights or interest under this Lease or subject any portion of any item of Equipment to loss or forfeiture, and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest or any appeal therefrom.

Section 7.11 Submitting False Claims; Monetary Penalties.

Any contractor, subcontractor, sublessor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs,

including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

ARTICLE VIII

INSURANCE

Section 8.01 Insurance. Lessor acknowledges that the City maintains a program of self-insurance and agrees that the City shall not be required to carry any third-party insurance coverage or any other insurance with respect to the Equipment leased hereunder.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01 Damage, Destruction and Condemnation.

(a) If prior to the termination of this Agreement any Equipment (i) is damaged or destroyed (in whole or in part) or (ii) is stolen or otherwise unlawfully removed from the possession of the City, the City shall promptly repair, restore, or replace the damaged, destroyed or stolen Equipment. Alternatively, the City, at its option, may elect not to repair, restore or replace the damaged, destroyed or stolen Equipment, and the City may elect instead to prepay the unpaid Lease Payments constituting principal payments plus accrued interest attributable to such Equipment as of

the date of such damage, destruction or loss. The City must send to Lessor written notice of its election not to repair, replace or restore the Equipment within fifteen (15) Business Days from the date the Equipment was damaged or destroyed. The City's obligation to pay the foregoing amounts shall be subject to the availability of appropriations for such amounts.

(b) If all the Equipment or so much thereof as to render the remainder unusable for the purposes for which it was used or intended to be used by the City shall be taken under the power of eminent domain, the Agreement shall cease as of the day that possession shall be so taken. The City shall take or cause to be taken such action as is reasonably necessary to obtain compensation at least equal to the value of the Equipment or portion thereof taken by eminent domain and all condemnation proceeds shall be transferred by the City to the Lessor, and such proceeds shall be applied to prepay the Lease Payments attributable to the Equipment so taken. If less than all the Equipment shall be taken under the power of eminent domain and the remainder is usable for the purposes for which it was used by the City at the time of such taking, then this Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial

abatement of the Lease Payments due under this Agreement in an amount equal to the proportion which the value of that portion of the Equipment taken under the power of eminent domain bears to the fair rental value of the Equipment taken.

ARTICLE X

DISCLAIMER OF WARRANTIES;

VENDOR'S WARRANTIES; USE OF THE EQUIPMENT

Section 10.01 Disclaimer of Warranties. THE LESSOR MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT, OR A DEALER THEREIN AND THAT THE CITY LEASES THE EQUIPMENT "AS-IS," IT BEING AGREED THAT ALL THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the Lessor be liable for any incidental, indirect, special or consequential damage in connection with the City's use of any Equipment provided for in this Agreement.

Section 10.02 Warranties of Vendor. The Lessor hereby irrevocably appoints the City its agent and attorney-in-fact during

the term of this Agreement, so long as the City shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, which the Lessor may have against the manufacturers and vendors of the Equipment. The City's sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of the Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. The City expressly acknowledges that the Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties of the manufacturer or vendor.

Section 10.03 Use of the Equipment. The City will not install, use, operate or maintain the Equipment negligently, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. The City shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment.

ARTICLE XI

EVENTS OF DEFAULT

Section 11.01 Events of Default.

(a) The occurrence of any of the following events shall constitute an "**Event of Default**" by the City under this Agreement:

(1) Failure to make any Lease Payment required under the Agreement when the same becomes due and payable, and such failure continues for more than ten (10) Business Days after notice thereof from the Lessor; provided, however, no Event of Default shall occur if such failure to pay was due to the City failing to appropriate sufficient funds to make the required Lease Payment;

(2) Failure to make any additional payment required under the Agreement when the same becomes due and payable, and such failure continues for more than forty-five (45) days after notice thereof from the Lessor; provided, however, no Event of Default shall occur if such failure to pay was due to the City failing to appropriate sufficient funds to make the required payment;

(3) Failure to keep, observe or perform any material term, covenant or condition (other than as set forth in subparagraphs (1) and (2) above) contained in this Agreement to be kept or performed by the City and such failure shall have continued for more than sixty (60) days after the City receives written notice thereof from the Lessor;

(4) Any representation or statement of the City contained in this Agreement proves to have been false in any material respect when made or furnished; or

(5) Any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy insolvency, or similar law or any law providing for the appointment of a receiver, liquidator, trustee or similar official of the City, or all or substantially all of its assets, is instituted by or with the consent of the City, or is instituted without its consent and is not permanently stayed or dismissed within sixty (60) days, or if the City offers to the City's creditors to effect a composition or extension of time to pay the City's debt or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the City's debts,

or if the City shall make a general or any assignment for the benefit of the City's creditors.

(b) The occurrence of any of the following events shall constitute an "**Event of Default**" by Lessor under this Agreement:

(1) Except as allowed under Article XII hereof, an assignment of this Agreement;

(2) Failure to keep, observe or perform any term, covenant or condition contained in this Agreement to be kept or performed by the Lessor and such failure shall have continued for sixty (60) or more days after the Lessor receives written notice thereof from the City;

(3) Any warranty, representation, or statement of Lessor contained in this Agreement proves to have been false in any material respect when made or furnished; or

(4) Any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency, or similar law or any law providing for the appointment of a receiver, liquidator, trustee or similar official of the

Lessor, or all or substantially all of its assets is instituted by or with the consent of the Lessor, or is instituted without its consent and is not permanently stayed or dismissed within sixty (60) days, or if the Lessor offers to the Lessor's creditors to effect a composition or extension of time to pay the Lessor's debt or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Lessor's debt, or if the Lessor shall make a general or any assignment for the benefit of the Lessor's creditors.

Section 11.02 Remedies under this Agreement.

(a) Upon the occurrence of an Event of Default by the City or Lessor, it shall be lawful for the non-defaulting party to exercise any and all remedies available pursuant to law or granted pursuant to this Agreement.

(b) Upon the occurrence of an Event of Default by the City, the Lessor shall have the option to take, in addition to all other rights and remedies it may have at law, any of the following actions:

(1) The Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

(2) The Lessor may retake possession of the Equipment with respect to which there has been a default, and sell or lease such Equipment, holding City liable for all Lease Payments on such Equipment up to the effective date of repossession.

(c) Upon the occurrence of an Event of Default by Lessor, the City shall have the option to take, in addition to all other rights and remedies it may have at law, one or more of the following actions:

(1) Whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Lessor under this Lease.

(2) Terminate this Agreement and acquire Equipment from another source. Such termination shall not waive any other legal remedies available to the City.

ARTICLE XII

ASSIGNMENT BY LESSOR

Section 12.01 Right of Assignment. This Agreement entered into hereunder shall be binding upon and inure to the benefit of the Lessor and the City. Except as otherwise agreed to in writing by the Parties, this Agreement shall not be assignable or transferable.

Section 12.02 Private or Public Offering.

(a) The Lessor agrees not to effect a private or public offering of certificates of participation, municipal securities or other debt instruments representing fractionalized interest in this Agreement (collectively, "**Securities**") without first obtaining the written consent of the City, as such consent shall be approved as to form by the City Attorney. The Parties agree that the City shall have the right to require the Lessor to satisfy any

conditions the City imposes before it consents to any offering of Securities, including approval by the City's Board of Supervisors.

Section 12.03 Right to Sublease. The City shall not have the right to sublease any Equipment without first obtaining the Lessor's prior written consent.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.01 Waiver. No delay or omission by either Party in exercising any of its rights in this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude a Party from any or further exercise of any right or remedy. Either Party may itself cure any Event of Default by the other Party without waiving the Event of Default and such cure shall not constitute a waiver of any prior or subsequent Event of Default.

Section 13.02 Governing Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

Section 13.03 Amendment. This Agreement may not be amended unless the same is in writing, signed by the parties hereto, and approved by the City Attorney.

Section 13.04 Notices. All notices, certificates or other communications hereunder shall reference this Agreement. Such notice, certificate or other communication shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

Port: Finance Manager
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

Telephone: (415) 274-0442
Facsimile: (415) 274-0630

Lessor: [insert name & address]

Whenever the Lessor delivers to the City any notice, certificate or other communication relating to (i) a late payment by the City, (ii) Event of Default by the City or (iii) transfer of title of any Equipment to the City, the Lessor shall also deliver a copy of such notice to the Office of the Controller, 875 Stevenson Street, 2nd Floor, San Francisco, California 94103.

Section 13.05 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto. All prior negotiations, representations and additional or inconsistent oral or written statements are superseded, null and void.

Section 13.06 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions and such invalidity, illegality or unenforceability shall not affect any other provision, and the pertinent agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained in this Agreement.

Section 13.07 Article and Section Headings. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "articles" and "sections" are to the corresponding articles or sections of this Agreement; the words "herein," "hereof," hereby," "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article or Section hereof.

Section 13.08 Payments. Should either Party be required to make any payment hereunder and no specific time is given for such payment, then such amount shall be due and payable twenty (20) days after receiving written demand from the payee Party.

Section 13.09 Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

Section 13.10 Waiver of Personal Liability. No member of the City's Board of Supervisors nor any officer, agent or employee of the City shall be individually or personally liable for the Lease Payments or any other payments coming due hereunder or be subject to any personal liability or accountability by reason of this Agreement.

Section 13.11 Nondiscrimination Liability. Lessor shall not, in connection with this Agreement, discriminate against any person or group of persons solely because of race, color, creed, national

origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapter 12B of the San Francisco Administrative Code, as amended from time to time, relating to nondiscrimination by parties contracting with the City, are incorporated herein by reference and made a part of this Agreement as though fully set forth. Lessor agrees to comply with all of the provisions of such Chapter 12B that apply to parties contracting with the City.

Section 13.12 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Sections 12F.1, et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Lessor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

Section 13.13 Topical Hardwoods. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

Section 3.14 Burma (Myanmar) Business Prohibition Lessor is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. Any items sold pursuant to this Agreement to the City and City and County of San Francisco are not made in Burma (Myanmar) as defined in Section 12J.4(A) of the San Francisco Administrative Code. The City reserves the right to terminate this Agreement for default if Lessor violates the terms of this Section 18.16.

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Lessor to comply with any of its requirements shall be deemed a material breach of contract. In the event that Lessor fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative code, Lessor shall be liable for liquidated damages for each violation in an amount equal to Lessor's net profit under the contract, or 10% of the total amount of the contract, or $1,000, whichever is greatest. Lessor acknowledges and agrees that the liquidated damages assessed shall

be payable to the City upon demand and may be set off against any moneys due to Lessor from any City contract.

Section 3.15 Drug-Free Workplace Policy. Lessor Acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Lessor agrees that any violation of this prohibition by the Lessor, its employees, agents or assigns shall be deemed a material breach of this Agreement.

Section 13.16 Non-Discrimination in City Contracts and Benefits Ordinance. Contractor Shall Not Discriminate. In the performance of this Agreement, Lessor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of and any City employee working with, or applicant for employment with Lessor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities,

privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessor.

Non-Discrimination in Benefits. Lessor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions and exceptions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

Condition to Contract. As a condition to this Agreement, Lessor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission

Section 13.17 Resource Conservation; Liquidated Damages. Chapter 21A of the San Francisco Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by Lessor to comply with any of the requirements of Chapter 21A shall be deemed a material breach of this Agreement. In the event Lessor fails to comply in good faith with any of the provisions of Chapter 21A, Lessor shall be liable for liquidated damages in an amount equal to five percent (5%) of the total gross revenues. Lessor acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County upon demand and may be set off against any monies due to Lessor from any agreement with the City and County of San Francisco.

Section 13.18 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, lessors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the

contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Section 13.19 Compliance with Americans with Disabilities Act. Without limiting any other provision of this Agreement, Financial Advisor shall provide the services specified in this contract in a manner that complies with the American With Disabilities Act (ADA) Title 24, and any and all other applicable federal, state and local disability rights legislation. Financial Advisor agrees not to discriminate against disabled persons in the provision of Financial Advisor's services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Financial Advisor, its employees, agents or assigns shall constitute a material breach of this Agreement.

Section 13.20 Charter Provisions. The terms and provisions of this Agreement shall be governed by and be subject to the provisions of the Charter of the City as in effect on the date of execution hereof.

Section 13.21 Non-Exclusive Agreement. The Lessor fully understands and acknowledges that the City has the right to enter into other lease-financing agreements during the term of this

Agreement with any other Person, including, without limitation, the City and County of San Francisco Finance Corporation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LESSOR:

[Name of Entity]
a [Type of Entity]

[Name]
[Title]

San Francisco Port Commission

Executive Director

APPROVED AS TO FORM:

Deputy City Attorney

Director of Purchasing

Mastl.009:6/18/96

EXHIBIT A

LEASE ACCEPTANCE CERTIFICATE

[**Name of Lessor**]
[**Address of Lessor**]

Ladies and Gentlemen:

In accordance with the terms of the Lease/Purchase Agreement, dated as of _____ __, 19__ (the "**Agreement**"), by and between _____, as lessor and the City and County of San Francisco, as lessee (the "**City**"), the City hereby accepts all the Equipment set forth in the Equipment Schedule attached hereto. (All capitalized terms in this Lease Acceptance Certificate not otherwise defined herein shall have the meanings ascribed to them in the Agreement.)

The undersigned hereby certifies that the Equipment described in the attached Equipment Schedule (i) has been delivered, installed and tested, (ii) has been fully and finally accepted by the City, and (iii) has been found by the City to be in good working order.

The undersigned hereby further certifies that the Equipment is of a size, design, capacity and manufacture selected by the City; and the City has selected the Equipment of a design, type and size for the purposes for which the Equipment is intended. The undersigned hereby further certifies that during the term of this Agreement, all Equipment leased will be used by the City only for the purpose of performing one or more governmental functions of the City consistent with the permissible scope of the City's authority.

The undersigned hereby further certifies that (i) at all times during the term of this Agreement, the City will, at the City's own cost and expense, maintain, preserve and keep all the leased Equipment, and every part thereof, in good operating order, repair and condition and that the City will from time to time make or cause to be made all necessary and proper repairs, including replacement of worn or damaged parts or components, and (ii) the City will not install, use, operate or maintain the Equipment negligently, in violation of any applicable law or in a manner

contrary to that contemplated by the Agreement, and (iii) the City shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment.

The undersigned hereby certifies that the Commencement Date for the Equipment described in the attached Equipment Schedule is _____ __, 19__.

All notices, certificates or other communications required under the Agreement should be delivered to _____ _____, San Francisco, California, _____; Facsimile: (415) _____.

Dated: _____

San Francisco Port Commission

By: _____

AS APPROVED BY:

_____
Director of Administrative Services

_____
Director of Purchasing

_____
Controller

AS ACCEPTED BY:
[LESSOR]

By: _____

Equipment Schedule

Quantity	Manufacturer/ Seller	Description	Identification or Serial No.	Cost	Useful Life

EXHIBIT B

PAYMENT SCHEDULE CERTIFICATE

[**Name of Lessor**]
[**Address of Lessor**]

Ladies and Gentlemen:

In accordance with the terms of the Lease/Purchase Agreement, dated as of _____ __, 19__ (the "**Agreement**"), by and between _____, as lessor and the City and County of San Francisco, as lessee (the "**City**") the City requests that the lease/purchase of the Equipment in the amount of $_____ be financed over a _____ year period. Based on the Commencement Date, the Index for this financing is _____ %. Based on the Index, the interest rate for this financing is _____ %.

The initial payment for this financing is $_____, thereafter, the [monthly] [semi-annual] payment will be $_____. The Schedule of Lease Payments related to this Payment Schedule Certificate is attached hereto.

Dated: _____ __, 19__

San Francisco Port Commission

By: _____
Director of Finance and Administration

AS ACCEPTED BY:
[LESSOR]

By: _____

Mastl.009:6/18/96

Lease Payments Schedule

Lease Payment Date	Lease Payment	Interest Portion	Principal Portion	Concluding Balance

EXHIBIT C

FORM OF OPINION ON COUNSEL

[Commencement Date]

[Name of Lessor]
[Address of Lessor]

Re: Lease/Purchase Agreement, dated as of _____ __, 19__, by and between the _____, as lessor and the City and County of San Francisco, as lessee

Ladies and Gentlemen:

This office has acted as counsel to the City and County of San Francisco (the "**City**") with respect to the execution and delivery of the above-referenced Lease/Purchase Agreement, dated as of _____ (the "**Agreement**"), by and between the City, as lessee, and as lessor (the "**Lessor**").

In connection therewith, the undersigned has examined such documents as the undersigned deemed necessary for the purposes of this opinion, including, but not limited to, the Agreement. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

Based upon such examination, the undersigned is of the opinion that:

1. The City is a municipal corporation and a chartered city and county of the State of California (the "**State**").

4. No action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, governmental agency, public board or body, is pending or threatened against the City, to restrain or enjoin the payment of Lease Payments under the Agreement, or in any way contesting the validity of the Agreement.

5. To the best of the undersigned's knowledge, the City's execution and delivery of the Agreement and compliance by the City with the provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it is bound or under the Charter of the City or any existing law, regulation, court order or consent decree applicable to the City.

6. The Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding agreement of the City enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally. We express no opinion as to the availability of equitable remedies or the enforceability of the indemnification provisions therein. In addition, we advise you that a California court may not strictly enforce certain covenants if it concludes that such enforcement would be unreasonable under the then existing circumstances.

7. No authorization, approval, consent or other order of the State or any other governmental authority or agency within the State having jurisdiction over the City is required for the valid

authorization, execution, delivery and performance by the City of the Agreement which has not been obtained.

Very truly yours,

LOUISE H. RENNE
City Attorney

Mastl.009:6/18/96

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
www.sfport.com

MEMORANDUM

October 8, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice-President
Hon. Michael Hardeman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of License with Panelight Display Systems, Inc. for storage space located in the Ferry Building

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

BACKGROUND

Panelight Display Systems, Inc. is currently a tenant in the Agriculture Building under Port Lease Nos. 11747, 11969 and 12451 for approximately 2,182 sq. ft. of office and storage space.

Panelight Display Systems, Inc. has proposed to lease approximately 485 sq. ft. of storage space located on the ground floor of the Ferry Building. The proposed use is for storage of files and office equipment. The Base Rent for the License is $339.50 ($0.70 per sq. ft.) per month. The License will commence after Commission approval.

This License requires Port Commission approval because there are no Commission approved parameter rental rates for miscellaneous storage space in the Ferry Building.

THIS PRINT COVERS CALENDAR ITEM NO. 9A

Proposed Terms:

1)	Premises:	Approximately 485 sq. ft. of storage space located on the first floor the Ferry Building.
2)	Term:	The term shall commence after Commission approval of the License.
3)	Use:	The use shall be for file and office equipment storage.
4)	Base Rent:	The Base Rent shall be $339.50 per month ($0.70 per sq. ft.).

Recommendation

Port staff has concluded that the proposed rental rate is fair market rent for the Premises. Port staff recommends approval of License No. 12667 with Panelight Display Systems, Inc.

Prepared by: Mark W. Lozovoy, Sr. Property Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-100

WHEREAS, Section B 3.581 of the City Charter empowers the Port Commission of San Francisco (the Commission) with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Section B 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Panelight Display Systems, Inc. has proposed to lease approximately 485 sq. ft. of storage space located in the Ferry Building for the purposes of file and office equipment storage; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves License No. 12667, between the Port Commission and Panelight Display Systems, Inc. on the terms and conditions outlined in the memorandum to the Port Commission for Agenda Item 9A of the Port Commission meeting on October 13, 1998, and the Port Commission authorizes the Executive Director of the Port, or his designee, to execute the same on behalf of the Port in such form as is approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 13, 1998.

_____
Secretary

G:\WP51\AGENDAS\PANELIGHT DISPLAY SYSTEMS, INC..DOC\9/28/98

SAN FRANCISCO
PORT COMMISSION

OCTOBER 13, 1998
MINUTES OF THE REGULAR MEETING

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HON. DENISE McCARTHY, PRESIDENT
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HON. MICHAEL HARDEMAN

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE REGULAR MEETING
OCTOBER 13, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 4:03 p.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon and Michael Hardeman.

2. APPROVAL OF MINUTES - September 22, 1998 Regular Meeting

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; the minutes of the meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report. Mr. Wong welcomed Brian McWilliams, newly appointed Port Commissioner. Mr. Wong reported the following:

(1) Activities of Fleet Week 1998 culminated this past weekend as thousands of people came to the waterfront and enjoyed the beautiful weather and the US Navy Blue Angels air show. This year, the Port played host to three US Navy ships, a US Coast Guard Cutter as well as a Canadian Coast Guard vessel. Of special interest, in a special ceremony at Pier 94 this past Saturday, the non-profit foundation who manages the Liberty Ship S.S. Jeremiah O'Brien was officially given the deed to ownership of the vessel from the US Maritime Administration by MARAD Chief Clyde Hart. He congratulated the staff and crew of the O'Brien for all their hard work in finally making their dream a reality.

(2) The Port has been participating as a sponsoring agency for the Blue Ribbon Task Force on Water Transit. The Task Force has been holding a series of public forums throughout the Bay Area to solicit public input into the plan for increased ferry service. The task force will be meeting next Monday, October 19 at 1:00 p.m. at Pier 35 to solicit input from San Franciscans on the issue of ferry service on the bay. Mayor Brown, Supervisors Kaufman and Newsom as well as Commission President Denise McCarthy are scheduled to speak. Members of the public are strongly encouraged to come and express their views on this important subject.

(3) Veronica Sanchez, Manager of Governmental Affairs, gave the Commission a brief update regarding the legislation to change the Passenger Services Act (PSA). This Commission has long-standing support of those changes. Two weeks ago a legislation, introduced by Senator McCain and co-authored by the Senator of Texas, was scheduled for a vote in the Senate Commerce Committee. The legislation would give relief from the PSA to the Port of San Francisco and other ports that are geographically disadvantaged. Under that legislation, the waiver was only for legs of cruises when the ship is in a repositioning wedge. In addition, the coalition also supported allowing reflagging of foreign built vessels on a fast track basis to get some US flag cruise ships into the market. The bill failed to get the support of democratic members because of continued opposition by seafaring maritime unions. Out of frustration, Senator McCain issued a very blistering statement about the reasonable compromise (a copy of which was distributed to the Commission). He then declared his intent to come back with the bill next year, as he believed there was a greater public benefit to be achieved by changing this law.

Senator Feinstein came on board as a co-author of the bill and Ms. Sanchez acknowledged her leadership. This San Francisco community rallied to get the Senator's support behind the bill. Don Fisher, chairman of the Gap, intervened to get that support as well as some local business, civic and labor leaders in the community. Now that we have bipartisan support, Senator Feinstein's support will be the key in bringing other democrats to the table to support the bill next year. The Cruising America Coalition had a conference call and the participation of ports throughout the country was incredible. At the American Association of Port Authorities in Houston, the coalition's work has received tremendous recognition in terms of moving this issue forward and trying to put a more reasonable legislation.

She acknowledged the work of Chereese Thymes, student intern, who has worked with her on the PSA issue since January. Ms. Thymes is completing her graduate work at the Monterey Institute and doing her thesis on the coalition of building behind the PSA and trying to put this on top of the Congress agenda. Ms. Thymes will be going onto the California State Senate.

On behalf of the Commission and Port staff, Commissioner McCarthy thanked Miss Thymes for her work, her enthusiasm, interest and willingness to learn more. Commissioner McCarthy suggested that a letter be sent from the Commission to Senator Feinstein thanking her for her support and anyone else who was instrumental in this issue. Ms. Sanchez indicated that San Diego and Los Angeles commissions are sending a letter of support to Senators Feinstein and McCain for their leadership. Ms. Sanchez also indicated that Senator McCain expressed his interest in visiting our port. Commissioner McCarthy thanked Ms. Sanchez for her continued work. She then offered the Commission's help in the next effort.

B. Approval of a contract with the Bay Area Council in the amount of $650,000 for purposes of performing studies related to the Blue Ribbon Task Force for Bay Area Water Transit. Approval to accept and expend a grant in the amount of $50,000 from the Metropolitan Transportation Service for the study. Approval to accept and expend a grant in the amount of $600,000 from the California Department of Transportation for the study. (Resolution No. 98-101)

Commissioner Brandon inquired about the Blue Ribbon Task Force and the Bay Area Council. Mr. Florin replied that the Blue Ribbon Task Force was created by State Legislation SB 19, which mandated that a Bay Area Regional Blue Ribbon Task Force be created to look into the issue of ferry service, water transit on the bay. It mandated that the Bay Area Council staff the study and present back to the legislature this spring a report on the feasibility of increasing ferry service on the bay. There are 27 members of the task force, representing all the counties as well as ferry operators, mayors, board of supervisors, MTC, an inclusive group that meets quarterly.

Commissioner Brandon asked that since we are asking to indemnify the State against actions related to the award of the Caltrans grant, what actions could possibly be brought against the Port. Mr. Florin replied that none is foreseen; it is part of what Caltrans requires of the agency. When the Bay Area Council asked for funding for the study, money was appropriated by the State legislature and Caltrans was designated as the State agency responsible for disbursing the funds. The Port of San Francisco was designated as the recipient of these funds. In order for the funds to be disburse, the Port has to enter into an agreement with Caltrans to receive those funds. As part of that agreement, they require that we indemnify them against any actions that may occur. We foresee none occurring since this is not a construction project but a study.

Commissioner McCarthy asked why the money did not go directly to the Bay Area Council. Mr. Florin indicated that the third part of this item is to contract with the Bay Area Council to give them the funds that flow to us and ultimately to them.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 98-101 was adopted.

4. MARITIME

5. REAL ESTATE

6. FACILITIES & OPERATIONS

A. Approval to advertise for competitive bids for the Pier 52 Public Boat Launch and Support Facilities Project. (Resolution No. 98-102)

Mr. Alex Lee, Director of Facilities & Operations, requested Commission's permission to advertise for competitive bids for the Pier 52 Public Boat Launch and Support Facilities Project. Port staff and an architectural/engineering consultant team have completed their design of the Public Access Improvements Project at Pier 52. The main project elements include:

- A new double-lane pile supported boat launch with boarding floats;
- A disability access gangway;
- Removal of concrete rubble debris and placement of new riprap shoreline protection;
- A 40-space pull-through trailer boat parking lot;
- 15' wide minimum sidewalks, public access amenities including landscaping, paths along the shoreline, picnic tables and benches; and
- Roadway improvements including four traffic lanes, as well as two bike lanes and a new crosswalk signal featuring an LED flashing light warning system.

The project has received the required permits from BCDC and the US Army Corps of Engineers. The Port Commission previously accepted responsibility to manage grants from the Dept. of Boating & Waterways in the amount of $493,000 for the construction of the new boat launch and parking lot. In addition, the Port Commission has approved $1.4 million in capital funds to design and construct the improvements at the Pier 52 site.

Commissioner Brandon asked how the bid would be advertised. Mr. Lee replied that the bid would be advertised according to Port's bidding procedures. Packages were already sent out to minority builders association and contractors association. It will also be advertised in the newspaper.

Commissioner McCarthy asked if two boats would be able to launch at the same time. Mr. Lee replied that the boat launch was redesigned to incorporate two lanes at Commission's request and two boats would be able to be launched at the same time.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-102 was adopted.

B. Authorization to award Construction Contract No. 2655, "Maintenance Dredging at Pier 35 East Phase II, Pier 35 West, and Pier 80 Berths A, B, and C" to Dutra Dredging Company. (Resolution No. 98-103)

Mr. Alex Lee, Director of Facilities & Operations, requested Commission's approval to award Construction Contract No. 2655 to Dutra Dredging Company. The Port Commission authorized the advertisement of Construction Contract 2655 at its September 8th regular meeting. This contract is for maintenance dredging at

Pier 35 East Phase II, Pier 35 West, and Pier 80 Berths A, B, and C. The maintenance dredging work includes contractor mobilization and demobilization, surveying, dredging, dredge spoils disposal at Alcatraz and trucking and disposal of unsuitable dredge soil material from Pier 35 East and West to a suitable landfill. The bid documents also included Additive Bid Items for dredging and disposal of unsuitable material from Pier 80 Berths A and B. The shipping schedule requires that dredging work start as soon as possible.

Two bids were received on September 28, 1998. Dutra Dredging Company was the lowest bidder at $1,840,870.80 for the total bid amount, which is the sum of all Base Bid Items and all Additive Bid Items. The unit price for disposal at Alcatraz is $3.28 for Dutra and $4.00 for Manson. For disposal at an upland disposal site, the price per cu.yd. is $35.36 for Dutra and $25.00 for Manson. The mobilization cost for Dutra is $175,000 and $985,000 for Manson. The Total Bid Amount was used as the basis for the determination of the low bid. After bids were opened, sediment test results for Pier 80 Berths A and B indicated that the dredge spoils at these berths are suitable for in-bay disposal, and therefore, there is no need for the Additive Bid Items in this contract. The contract can be awarded for the Base Bid Items only. Additional unsuitable bottom sediment was found at Pier 35 East and West, requiring that the unsuitable material quantities noted in Base Bid Items UP-2 and UP-4 be increased over that noted in the bid documents. The bid documents and contract allow the Port to increase or reduce quantities for all of the Bid Items. He recommended that the Commission authorize the award of Contract No. 2655 to the lowest bidder, Dutra Dredging Company, in the amount of $1,770,565 plus a 15% contingency to cover uncertainties in the dredge quantity requirements.

Commissioner Brandon asked for clarification of the $1,379,069.20 amount and the total cost estimate of $1,770,565. Mr. Alex Lee responded that the total bid items from LS-1 to UP-7 and AUP-1 and AUP-2 were used as the basis for the determination of the low bid. Even though the units comparison was used, there was no guarantee that they'll get all that unit. The estimated amount was finalized upon receiving further testing results. Additive items were not required because there were no unsuitable materials found at Pier 80 A&B. Staff increased the amount of bid item UP-4. Based on that calculation, staff came up with a contract amount of $1,770,565.

Commissioner McCarthy asked about the huge difference in the two bidders. Mr. Lee replied that although Manson is familiar with this type of work, it might be that Manson is busy with other projects.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 98-103 was adopted.

7. PLANNING & DEVELOPMENT

A. Authorization to issue a Request For Proposals ("RFP") for a mixed-use

development for Pier 24-½ (Pier 24 Annex) (Resolution No. 98-104)

Mr. Paul Osmundson, Director of Planning & Development, requested Commission's approval to authorize staff to issue a RFP for a mixed-use development for Pier 24-½ (Pier 24 Annex). The building contains approximately 24,000 square feet of enclosed, vacant space, which was once used for cargo warehousing and has not been occupied for several years. The site fronts on The Embarcadero and has sweeping views of the bay, the Bay Bridge, the Ferry Building, Treasure Island, the East Bay and The Embarcadero.

Pier 24-½ is part of the Rincon Pier Mixed Use Opportunity Area of the Port's Waterfront Plan. The Waterfront Plan states that the larger Opportunity Area, which includes Pier 26 and 28, provides excellent opportunities for entertainment activities to serve the general public, nearby local residents and downtown employees. The main objectives of this project are:

- Promote public enjoyment of the promenade and access to the waterfront by providing a destination that welcomes diverse users, including downtown workers, neighborhood residents as well as other San Franciscans and visitors to the waterfront.
- Generate activity in the area during the evenings and weekends to complement the weekday office uses in the adjacent downtown buildings.
- Help activate the adjacent Herb Caen Way (waterfront promenade).
- Maximize Port revenue from the site.
- Provide architectural design that reflects and enhances the waterfront setting.
- Provide seismic upgrades to the Pier 24 Annex building and substructure.
- Provide a project consistent with the policies, standards and design criteria in the Waterfront Plan and the Waterfront Design & Access Element.

Mr. Osmundson indicated that because of the need of considerable amount of work on the substructure of the pier, proposers are allowed to submit proposal for base rent and percentage rent. The initial term of the lease should not exceed 25 years; additional options could be requested.

Staff will select a respondent based on development concept, financial qualifications, economic return to the Port, experience and qualification of the entire team. Once that process is complete, staff would seek Commission's approval to authorize exclusive right negotiations to enter into a lease. The project will require approval by the Board of Supervisors, environmental review and BCDC and liquor license. Staff plans to issue the RFP on October 19 and expect responses in early January.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-104 was adopted.

8. FINANCE & ADMINISTRATION

A. Authorization to issue a Request for Bids to finance the lease/purchase of equipment. (Resolution No. 98-99)

Ms. Stephanie Downs, Finance Manager, requested Commission's approval to issue a lease/purchase for approximately $200,000 worth of maintenance equipment. The budget analyst consistently cuts maintenance equipment out of the Port's budget and this is a way for the Port to get $200,000 worth of necessary equipment but only have to pay $45,000-$46,000 a year on our budget over the next five years. Maintenance Supervisor Gary Olson has already received estimated cost for all of the equipment. This request is to issue the contract for the lease/purchase for the financing. The equipment will be bid separately. The current rate is 5.12%. We anticipate the bids falling in somewhere around that. At the time that we issue this, everyone will be bidding an index that will be rated according to a particular day. Whatever the lowest rate on that day will win the bid. As each piece of equipment is purchased and accepted, it would be fund on that day based on the index for that piece of equipment.

In response to Commissioner Brandon's inquiry about approving the bids, Ms. Downs replied that since this is bid on an index, it would not be a problem for the Commission to review the bids before awarding it to the lowest bidder. Commissioner Brandon asked that this be reflected in the resolution. Ms. Downs replied to the affirmative.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 98-99 was adopted.

9. CONSENT CALENDAR

A. Approval of license with Panelight Display Systems, Inc. for storage space located in the Ferry Building. (Resolution No. 98-100)

Commissioner Brandon asked about the term of the license. Mr. Smith replied that it is a month-to-month license.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-100 was adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Kevin Wong, owner of ABC Parking, Inc. indicated that he participated in the Port parking lot bid on September 15, 1998. Relying on past procedures, his expectation was that all the bids would be opened in front of the public. Someone had unilaterally

decided that the bids be opened in secret. He believes that this practice defeats the government's duty to be open and public in its decision. Normal business practice by the Port and other City departments such as the Department of Parking & Traffic is that all sealed bids be open immediately in public. Port staff's response to his complaint was that there was no legal requirement to open the bids in public. He reiterated page 2 of the Sunshine Act wherein it's the government's duty to serve the public, reaching its decision in full view of the public. He asked about what happened to due process and spirit of open bids and how that can be eliminated so easily. He emphasized that what Port staff is doing is not in keeping with those goals. Variations in past practice should be clearly known to all bidders. In the past, all the bid documents were opened publicly and the results made known to all. Page 5 and 6 of the bid documents state that "bids be opened immediately." In 1993, the bids were opened immediately and results were known in 20 minutes. In 1998, the bid results were not known until 3 days later. It seems that he lost to Alright Parking by $198. He would have liked to have seen the bids opened in front of him. To be told three days later that he lost by $198 disturbs him. He indicated that the Commission is creating a precedent if it allows this unfair practice to go on. He requested that the Commission reject all bids for the Port parking lots and the Commission establish an administrative bid policy requiring bids to be opened in public. He feels that this is the Commission's responsibility to rectify this practice as this is in direct contradiction for a full and direct proceeding.

Commissioner McCarthy indicated that the Commission would ask staff to look into this matter and prepare a response.

11. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

At 4:40 p.m., the Commission Secretary announced that the Commission would withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

b. Property: Seawall Lots 322-1, 323 and 324 located at Broadway and The Embarcadero.
Person Negotiating
Port of San Francisco: Kirk Bennett, Manager, Waterfront Development Projects.

c. Property: Rincon Park Restaurant
Person Negotiating
Port of San Francisco: Anne Cook, Manager, Waterfront Development Projects

d. Property: Piers 27/29 and Piers 30/32
Person Negotiating
Port of San Francisco: Anne Cook, Manager, Waterfront Development Projects

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS:

a. Discuss existing litigation matters pursuant to subdivision (a) of the California Government Code Section 54956.9 (three cases).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.
- CICO vs. CCSF, San Francisco Superior Court No. 989-618.
- CICO vs. CCSF, San Francisco Superior Court No. 989-294.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (two cases).

12. RECONVENE IN OPEN SESSION

At 6:30 p.m., Commissioners McCarthy, Brandon and Hardeman returned from executive session and convened in public session.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in the executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:32 p.m.

SAN FRANCISCO PORT COMMISSION

SPECIAL MEETING - PLEASE NOTE THE TIME OF THE MEETING

*** * * 3:15 P.M. THURSDAY, OCTOBER 15, 1998 * * ***

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SAN FRANCISCO, CA 94111

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AGENDA

1. **NEW BUSINESS/PUBLIC COMMENT**

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

2. **EXECUTIVE SESSION**

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. This sessions is closed to any non-City/Port representative.*

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING AND ANTICIPATED LITIGATION MATTERS:

a. Discuss existing litigation matters pursuant to subdivision (a) of the California Government Code Section 54956.9 (three cases).

- Peer Inn, Federal Bankruptcy Court Case No. 98-31586TC.
- CICO vs. CCSF, San Francisco Superior Court No. 989-618.
- CICO vs. CCSF, San Francisco Superior Court No. 989-294.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (two cases).

3. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1 (a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

4. ADJOURNMENT

SAN FRANCISCO
PORT COMMISSION

OCTOBER 15, 1998
MINUTES OF THE SPECIAL MEETING

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HON. MICHAEL HARDEMAN

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
THURSDAY, OCTOBER 15, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 3:25 p.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon and Michael Hardeman.

2. NEW BUSINESS / PUBLIC COMMENT

3. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

At 3:27 p.m., the Commission Secretary announced that the Commission would withdraw to executive session to discuss the following:

B. **CLOSED SESSION**

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS:

a. Discuss existing litigation matters pursuant to subdivision (a) of the California Government Code Section 54956.9 (three cases).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.
- CICO vs. CCSF, San Francisco Superior Court No. 989-618.
- CICO vs. CCSF, San Francisco Superior Court No. 989-294.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (two cases).

4. RECONVENE IN OPEN SESSION

At 4:05 p.m., Commissioners McCarthy, Brandon and Hardeman returned from executive session and convened in executive session.

ACTION: Commissioner Brandon moved approval not to disclose any information discussed in executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 4:07 p.m.

SAN FRANCISCO PORT COMMISSION

SPECIAL MEETING – PLEASE NOTE DATE/TIME OF THE MEETING
8:30 A.M., WEDNESDAY, OCTOBER 21, 1998
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

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AGENDA

1. **ROLL CALL**

2. **NEW BUSINESS / PUBLIC COMMENT**

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

3. **EXECUTIVE SESSION**

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating - Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

b. Property: Rincon Park Restaurant
Person Negotiating - Port of San Francisco: Anne Cook, Manager, Waterfront Development Projects

An executive session has been calendared to provide directions to real estate negotiator regarding responses received to the Request for Proposals.

4. **RECONVENE IN OPEN SESSION**

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

5. **ADJOURNMENT**

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100. The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142. There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building. Assistive listening devices are available for use in the Port Commission Meeting. The following services are available on request 72 hours prior to the meeting: (1) American Sign Language Interpreters; (2) A Sound Enhancement System; (3) The use of a reader during the meeting and (4) copies of the agenda or minutes of the meeting in alternative formats. Please contact Kevin Jensen, the Port's ADA Coordinator at (415) 274-0555. Late requests will be honored if possible. Please contact the Commission Secretary at (415) 274-0406 should you require large print of the agenda.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-4851.

San Francisco Lobbyist Ordinance

Attention: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Admin. Code 16.520 – 16.534) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #701, San Francisco, CA 94102, phone (415) 554-9510 or fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/.

SAN FRANCISCO
PORT COMMISSION

OCTOBER 21, 1998
MINUTES OF THE SPECIAL MEETING

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HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
OCTOBER 21, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 9:40 a.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon, Michael Hardeman, Brian McWilliams and Pius Lee.

On behalf of the Commission, Commissioner McCarthy welcomed the three newly sworn-in Commissioners to the Port Commission.

2. NEW BUSINESS / PUBLIC COMMENT

3. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

At 9:42 a.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating - Port of San Francisco: Paul Osmundson, Director of Planning & Development

b. Property: Rincon Park Restaurant
Person Negotiating - Port of San Francisco: Anne Cook, Manager, Waterfront Development Projects

4. RECONVENE IN OPEN SESSION

At 11:15 a.m., Commissioners Hardeman, McWilliams and Lee returned from executive session and convened in public session. Commissioners McCarthy and Brandon left for a meeting with the Mayor.

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

ACTION: Commissioner Hardeman moved approval to not disclose any information discussed in executive session; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 11:17 a.m.

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SAN FRANCISCO
PORT COMMISSION

SPECIAL MEETING – PLEASE NOTE THE DATE/TIME OF THE MEETING
→→→3:00 P.M., TUESDAY, OCTOBER 27, 1998←←←
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

AGENDA

1. **ROLL CALL**

2. **NEW BUSINESS/PUBLIC COMMENT**

   Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

3. **EXECUTIVE SESSION**

   A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

   B. CLOSED SESSION

      (1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

         a. Property: Ferry Building
         Person Negotiating:
         Port of San Francisco: Paul Osmundson, Director of Planning & Development

         An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

      (2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS:

         a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

b. Discuss existing litigation matter pursuant to subdivision (a) of the California Government Code Section 54956.9 (one case).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.

4. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

5. ADJOURNMENT

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100. The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142. There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building. Assistive listening devices are available for use in the Port Commission Meeting. The following services are available on request 72 hours prior to the meeting: (1) American Sign Language Interpreters; (2) A Sound Enhancement System; (3) The use of a reader during the meeting and (4) copies of the agenda or minutes of the meeting in alternative formats. Please contact Kevin Jensen, the Port's ADA Coordinator at (415) 274-0555. Late requests will be honored if possible. Please contact the Commission Secretary at (415) 274-0406 should you require large print of the agenda.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-4851.

San Francisco Lobbyist Ordinance

Attention: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Admin. Code 16.520 - 16.534) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #701, San Francisco, CA 94102, phone (415) 554-9510 or fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/.

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PORT COMMISSION

OCTOBER 27, 1998
MINUTES OF THE SPECIAL MEETING

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MEMBERS, PORT COMMISSION

HON. DENISE McCARTHY, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHAEL HARDEMAN
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
OCTOBER 27, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 3:02 p.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon, Michael Hardeman and Pius Lee. Commissioner Brian McWilliams was not present.

2. NEW BUSINESS/PUBLIC COMMENT

3. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 3:05 p.m., the Commission Secretary announced that the Commission would withdraw to executive session.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

b. Discuss existing litigation matter pursuant to subdivision (a) of the California Government Code Section 54956.9 (one case).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.

4. RECONVENE IN OPEN SESSION

At 4:15 p.m., Commissioners McCarthy, Brandon, Hardeman and Lee returned from executive session and convened in public session.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in the executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 4:16 p.m.

SAN FRANCISCO
PORT COMMISSION

REGULAR MEETING
4:00 P.M., TUESDAY, OCTOBER 27, 1998
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - October 13, 1998 Regular Meeting
   - October 15, 1998 Special Meeting
   - October 21, 1998 Special Meeting

3. **EXECUTIVE**

   A. Executive Director's Report

4. **MARITIME**

5. **REAL ESTATE**

6. **FACILITIES & OPERATIONS**

7. **PLANNING & DEVELOPMENT**

   A. Approval of the J.C.Decaux and City & County of San Francisco Contract Amendment to the Automatic Public Toilet and Public Service Kiosk Agreement. (Resolution No. 98-105)

   B. Approval to enter into Exclusive Right to Negotiate for the development of the Rincon Park Restaurant. (Resolution No. 98-106)

   C. Authorization to issue Request for Qualifications and Proposals for a hotel development opportunity at Broadway and The Embarcadero. (Resolution No. 98-107)

   D. Resolution approving the selection of Pier 30-32 as a preferred location for the development of the new James R. Herman Cruise Ship Terminal. (Resolution No. 98-108)

8. **FINANCE & ADMINISTRATION**

9. **CONSENT CALENDAR**

10. **NEW BUSINESS / PUBLIC COMMENT**

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11. **ADJOURNMENT**

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PORT OF SAN FRANCISCO

Ferry Building
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Telephone 415 274 0400
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MEMORANDUM

October 23, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: **Amend contract with the J.C. Decaux Company and the City and County of San Francisco to allow additional public toilets and kiosks to be installed within the City of San Francisco.**

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION ALLOWING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH THE J.C. DECAUX COMPANY AND THE CITY AND COUNTY OF SAN FRANCISCO

The Port Commission authorized the Executive Director to execute a contract with the City and County of San Francisco and the J.C. Decaux Company (April 1994) for the installation and maintenance of self-cleaning public toilets and public service kiosks on Port property. As a part of that authorization, the Commission must review and approve all of the locations within its jurisdiction. The City and the J.C. Decaux Company are now requesting that the original contract be amended to extend the program beyond the trial phase and to allow additional kiosks and public toilets throughout the City. Attached is a copy of the Director of Public Works summary of the proposed amendment.

As part of the original agreement there were to be four toilets and eight kiosks located on Port property. All eight kiosks and three toilets were installed and the fourth toilet was placed in another area of the City. The proposed contract amendment states that additional kiosks may be located within the City at a ratio of 4.5 kiosks per each toilet. The attached resolution states that any new kiosks and toilets located on Port property will be in addition to the existing toilets and kiosks and at the ratio of 4.5 to 1, not withstanding other installations of either toilets or kiosks in the City.

THIS PRINT COVERS CALENDAR ITEM NO. 7A

Each of the public information kiosks contains two panels of private advertisement and a third panel of Port and public service information. Each panel is backlit to allow for visibility at night. The kiosks are 14'-4" tall and 5'-5" in diameter. Each of the public toilets has two backlit panels to provide Port and public service information and a map of the Port.

The agreement requires that maintenance costs of both the toilets and kiosks be performed by the J.C. Decaux Company. The contract provides that the City will partially participate in the revenue stream from the kiosks at approximately two percent per year and increasing to five percent per year later in the contract. Based on the total number of kiosks existing on Port property the Port's prorata share of the revenue is estimated at about $4,000 per year.

Upon approval of the amended contract J.C. Decaux will be required to submit proposed locations of all kiosks and toilets to the Port. Property owners within a 300-foot radius are then notified of a public hearing to be held by the Port Commission to review the proposed locations. The contract amendments as introduced at the Board of Supervisors would require the Port Commission and Port Director to follow Department of Public Works Work Orders in exercising discretion to approve or disapprove new locations for public toilets and kiosks. Those Orders establish criteria for locating new facilities that the Port has considered in making past decisions. However, given the Port's responsibilities under the Burton Act and Charter, staff recommends that the Port Commission condition its approval of the amended contract on changing the language from requiring the Commission and staff to "follow" the Work Orders to provide that the Commission and staff will "consider" the Work Orders.

The attached resolution authorizes the Executive Director to enter into an amended agreement with the J.C. Decaux Company to install additional kiosks and toilets on Port Property at a ratio of 4.5 to 1, and requires Port Commission review of all proposed locations pursuant to the revised language discussed above. The resolution also authorizes the Director to enter into a MOU with the City for payment of its prorata share of revenue from the kiosks.

Prepared By: Dan Hodapp, Project Coordinator

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PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **98-105**

WHEREAS, The Port Commission, the City and County of San Francisco, and the J.C. Decaux Company have entered into a contract (April 1994) to install self-cleaning public toilets and public service kiosks on Port property; and

WHEREAS, The contract provides that a total package of four public toilets and eight public service kiosks were to be located on Port property, and J.C. Decaux has since installed three toilets and eight kiosks pursuant to the contract; and

WHEREAS, Pursuant to the contract, the J.C. Decaux Company will install and maintain, at no cost to the Port, the public toilets and public service kiosks on Port property, and will pay the City a percentage of the revenue from the kiosks; and

WHEREAS, Pursuant to the contract, the J.C. Decaux Company will submit engineering drawings to secure all necessary permits from the Chief Harbor Engineer and other regulatory agencies with jurisdiction over the proposed facilities; and

WHEREAS, Pursuant to the contract (Sec4.03,B) the Executive Director will review and approve all non-commercial advertising materials to be placed on either the public toilets or the kiosks; and

WHEREAS, The proposed amendments to the original contract as introduced at the Board of Supervisors would require the Port Commission and Port staff to follow Department of Public Works Work Orders ("DPW Work Orders") making decisions on the location or relocation of public toilets or kiosks, which Work Orders the Port has considered, but not been bound to follow under the existing contract; and

WHEREAS, The Port has responsibilities as trustee of the public trust property to exercise its own judgment in the establishment of uses and structures on the Port; and

WHEREAS, The City and the J.C. Decaux Company are requesting that the original contract be amended to allow additional kiosks and public toilets be placed throughout the City; now, therefore be it

RESOLVED, That the Port Commission authorizes the Executive Director to execute an amended contract with the City and County of San Francisco and the J.C. Decaux Company provided that the contract as amended require (1) that the Commission must review and approve the locations of new or relocated toilets and kiosks within its jurisdiction, and that the Commission and Port staff will consider DPW Work Orders, but not be bound to follow such Orders in making such decisions; and be it further

RESOLVED, That the installation and maintenance of self-cleaning public toilets and public service kiosks on Port property be at a ratio of 4.5 kiosks per each additional toilet placed on Port property; and be it further

RESOLVED, That the Executive Director shall enter into an MOU with the City to provide for payment to the Port of its prorata share of the revenue from kiosks.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 27, 1998.

_____

Secretary

City and County of San Francisco

(415) 554-6920
FAX (415) 554-6944
http://www.sfdpw.com

Willie Lewis Brown, Jr., Mayor
Mark A. Primeau, AIA, Director and City Architect

Department of Public Works
Office of the Director
875 Stevenson Street, Room 410
San Francisco, CA 94103-0934

September 23, 1998

Board of Supervisors
Room 308, 401 Van Ness Avenue
San Francisco, CA 94102

Attention: Gloria Young
Clerk of the Board

Subject: Proposed First Amendment and Restated Automatic Public Toilet Contract
And Public Service Kiosk Agreement

Dear Members of the Board:

Enclosed is an ordinance for consideration by the Board of Supervisors which approves a First Amended and Restated Automatic Public Toilet and Public Service Kiosk Agreement between the City and County of San Francisco and JCDecaux San Francisco Inc. Also enclosed for your information is a copy of the proposed First Amended and Restated Agreement.

The Automatic Public Toilet and Public Service Kiosk Agreement approved on August 2, 1994 mandated a two-year trial, calling for the installation of 20 public toilets, 70-newsstand kiosks and 20 other public service kiosks. Pursuant to the Agreement, the Toilet Program may not be expanded beyond the Trial Phase unless approval by the Board of Supervisors is obtained.

DPW believes the Toilet Program has been successful. Since the installation of the first automatic public toilet, we have recorded over 1.5 million flushes, averaging 86 flushes per toilet per day. Thirty-two (32%) of the entries are by free tokens which are distributed through non-profit organizations to homeless and people who cannot afford the 25 cents entry fee. The equipment has been consistently well maintained with no major problems reported. The Department of Public Works has received numerous inquiries for additional toilets in parks and neighborhood districts.

The proposed Amended and Restated Agreement eliminates the trial phase and allows the City to expand the toilet program to install a maximum of up to 50 Automatic Public Toilets and 225 Public Service kiosks as provided in the original Agreement. Other changes to the Agreement are summarized below:

1. Payment by Contractor. The proposed amendment increases the annual base payment to the City from $25,000 to $35,000 for the first two payments due on or after the Effective Date of the First Amended and Restated Agreement.

2. Hours of Operation. The hours of operation for the toilets are changed from 6:00 a.m. to midnight daily to 24 hours per day unless there are unreasonably increased costs associated with operating any particular toilet from midnight to 6:00 a.m. In such case, a toilet may be closed from midnight to 6 a.m. with the consent of the Director of Public Works.

3. Free Tokens. The number of free tokens to be distributed by the Contractor to the homeless or other needy individuals shall be increased from 10,000 to 40,000 or such higher number as agreed to by both parties.

4. Revised Locations. The Agreement is revised to indicate the correct locations of all existing toilets and provides proposed locations for seven additional toilets.

5. Kiosk Rotation. The Agreement is clarified to expressly prohibit the rotation of kiosks except for when they are manually rotated for the purpose of cleaning or unless the approval of the Director of DPW and all other appropriate City agencies is obtained.

6. Restriction on Installation of Toilets and Kiosks. The one-year moratorium on the installation of toilets after completion of the Initial Phase (i.e. 27 toilets and associated kiosks) is deleted. The number of toilets which may be installed in any one year following the Initial Phase is increased from 8 to 10 and a provision is added to state that the Contractor shall not be required to install any toilet unless all required permits for the toilet and associated kiosks are issued by the date five year and six months after January 17, 1997.

7. Designation of Use of Kiosks. The amendment slightly modifies the number of kiosks which must be designated as newsstands and allows any kiosk designated as a newsstand to be used for storage by the City at the option of the City.

8. Interactive Kiosks. The amendment provides that at the request of the City, both parties may negotiate an amendment to the Agreement for kiosks to accommodate interactive media terminals.

9. Electrical Connections. The Contract is modified to provide that the Contractor may use City owned street lighting conduit provided that there is available space in the conduits and with the prior approval of the City's Bureau of Light, Heat and Power (BLHP). The amendment also provides that the Contractor may not tap into the street lighting circuit unless approval by the BLHP.

10. Time Frame for Submissions and Installations. The amendment specifies that the Contractor must submit location drawings and encroachment permit fees to DPW for the 21st and 22nd toilets within 30 days of the Effective Date of the Amendment and must install those toilets within 60 days after the issuance of all applicable permits.

11. Taxes. The amendment clarifies the Contractor's responsibility for payment of all possessory interest tax.

12. Clarifications. The amendment incorporates several minor clarifications. Actual dates have been inserted for certain events which were formerly referred to by formula. A provision was added which states that to the extent the DPW Orders regarding the kiosks and toilets, which are made a part of the Agreement, are inconsistent with the Public Works Code, they are deemed to supersede the Code.

13. Addition of Mandated Provisions. The City's standard provisions regarding equal benefits, prohibition of City business with Burma, submissions of false claims and indemnification of the City for copyright and patent infringement have been added to the Agreement.

14. Addition of Updated Provisions. The Agreement has been modified to reflect the name change of JCDecaux United Street Furniture, Inc. to JCDecaux San Francisco and the new address for the Department of Public Works.

15. Deletion or Modification of Obsolete Provisions. The amendment deletes or modifies certain provisions or parts of provisions, which are no longer relevant. These changes include the deletion of the provision which requires the Contractor to pay up to $40,000 for the installation of two toilets on Port property and the provision which provide for a six month trial period to operate certain toilets without payment or tokens. The Contractor has met both of these requirements.

The Department of Public Works respectfully submits the enclosed ordinance and amendment to the Board for approval and requests notification as to whether this matter is subject to the Board's 30-day rule.

Sincerely,

Barbara L. Hwang
for Mark A. Primeau, AIA
Director of Public Works
and City Architect

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
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MEMORANDUM

October 22, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to Enter into an Exclusive Right to Negotiate for the Development of the Rincon Park Restaurant

DIRECTOR'S RECOMMENDATION: APPROVE EXCLUSIVE RIGHT TO NEGOTIATE WITH NICE VENTURES INC.

BACKGROUND

On July 23, 1998, the Port issued a Request for Proposals ("RFP") for the Restaurant Development Opportunity at Rincon Park. In this RFP, the Port solicited proposals from qualified Respondents ("Respondents") for the development and operation of a new restaurant adjacent to and south of the planned Rincon Park. The Park will be an approximately three acre park along The Embarcadero Promenade between Howard and Harrison Streets. At the Park's southern end, 20,000 square feet (the Site") has been set aside for the development of a restaurant building, and the remainder for outdoor support space, including outdoor seating, public access and open space.

The Port stated in the RFP that it would select a qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a first class restaurant on the Site, with the goal of negotiating a ground lease and related documents for the development and lease of the Site. The RFP further stated that the Commission intends to select a Respondent that can successfully create an outstanding culinary destination on the waterfront, will take full advantage of the spectacular Bay, Bay Bridge and City views and Park setting of this unique Site, and activate and enliven Rincon Park by drawing people to the waterfront and providing an amenity that will encourage them to extend their visit.

THIS PRINT COVERS CALENDAR ITEM NO. 7B

The RFP stated that the selected Respondent must have extensive experience in the financing, development and operation of first class restaurants, and preferably should possess experience with the start-up of new restaurant operations.

STAFF ANALYSIS OF RESPONSES

Two Respondents submitted responses to this RFP. Port staff has reviewed these two submittals with input on the financial and economic aspects of the proposals from CGMS, the Port's independent financial advisor. Staff analyzed Respondent's proposals against the criteria in the RFP and has concluded the following:

A. Experience and organization of the Respondent's team.

While both teams include members experienced in the development and operation of restaurants, the Nice Ventures Inc. team appears superior because the major partners have worked together on other successful projects in San Francisco. In addition to their proven track record with San Franciscan diners, the partner that will be added for this venture, GPS Park Restaurant, Inc., a proposed subsidiary of the GAP, will have a major stake in ensuring a quality restaurant development in the Park that will be at the "front door" of the Gap headquarters building. The Gap will be investing $2 million in the development of the Park, and will be responsible for its maintenance over the next ten years. As the restaurant's neighbor, they will share the Port's concern with ensuring a quality development to anchor the southern end of Rincon Park.

In addition, the roles of the team members are more clearly defined than in the Phoenix Proposal, most likely because many members of the team and the consultants have worked together in the past. The new members to the team will focus primarily on exterior architecture, landscape architecture and construction management. Although they have not apparently worked before with the Nice Ventures, Inc. team, they are uniquely qualified to ensure the success of many of the Port's qualitative goals for the restaurant because they are involved in the Rincon Park and/or Gap development projects. For example, by using the same landscape architect for the Restaurant and the Park (The Olin Partnership) the Port's objective of activating the Park presumably can be more easily attained.

Finally, the primary members of the Nice Ventures, Inc. team are local, or regularly in San Francisco because of ongoing projects. Many of the major members of the Phoenix Team (e.g. its primary investors, restaurant operators and project manager) currently reside as far away as India and Australia. For a time sensitive project such as the Rincon Park Restaurant, Staff believes this is a considerable disadvantage.

B. Experience of Restaurant Operator.

Both proposed restaurant operators appear to be culinary stars. They both have won numerous awards, and enjoyed very positive reviews and press. Staff believes that the Nice Ventures, Inc. proposal is superior in that the key

members of the team responsible for the restaurant operations (Reed Hearon, John O'Neill and Scott Warner) can be expected to remain involved in the restaurant for a longer period than the Phoenix proposal. Although the Phoenix proposal states that the restauranteurs (Neil Perry and Trish Richards) will be available for initial phases of the development of the restaurant concept, staffing training, etc, and opening of the facilities, the longer term management and operation of the restaurant is unclear.

C. Restaurant Concept

Both restaurant concepts are interesting. They take advantage of San Francisco's unique abundance of seafood and fresh produce. The Nice Ventures, Inc. proposal is Italian and Southern French inspired, while the Phoenix proposal is Asian inspired. Staff believes that the Nice Ventures, Inc. proposal is more sophisticated in that the restaurant concept is much more carefully tied to the indoor/outdoor nature of this remarkable setting. For example, it includes outdoor cooking and more focussed attention to the creation of an outdoor sense of place, as well as significantly more outdoor seats. Staff also believes that the idea of creating two smaller buildings, rather than one facility that tries to be everything to all people is a better strategy for success.

Although staff believes that the Phoenix proposal appears to better address the needs of Park frequenters by providing food that can easily be taken out to eat in the Park, the Nice Ventures, Inc. proposal does discuss the possibility of providing vendors in the Park, and staff believes that this idea can be pursued further during negotiations should the Commission decide to pursue negotiations with Nice Ventures, Inc.

D. Design and Engineering Consultants

As discussed above, the Nice Ventures, Inc. proposal has incorporated a superior team to ensure that development interfaces well with the Park. In addition, the architect responsible for the interior has a proven record in creating unique restaurant environments that work well with the restauranteur's concepts and that appeal to San Franciscans. Furthermore, by selecting William Wilson, the construction manager for the Park, as the construction manger for the restaurant, the overall coordination and phasing of both projects should proceed more smoothly.

E. Conceptual Design for Improvements

As discussed previously, Staff believes that the Nice Ventures, Inc. proposal provides a more sophisticated approach to creating a sense of a gathering place on the waterfront. Staff is concerned about the restaurant's relationship to the historic resources in the area, including the Hills Brothers Building and the Fire Boat Station. In addition, staff is concerned that the intensity of landscaping shown on the northern end of the restaurant site could preclude the feeling of movement between the restaurant and the Park which is a desired public

objective. Staff is confident, however, that these issues can and will be addressed during the community and agency review and comments processes expected for this project.

F. Financial Capacity and Plan

The Phoenix proposal is largely dependent on major equity investment(s) by individuals, at least one of whom has major real estate holdings in India. The liquidity of these holdings is not clear. The Nice Ventures, Inc. proposal relies primarily on debt financing of a magnitude that does not appear to have been sought previously by Nice Ventures, Inc., most likely because their other restaurants did not involve the major construction costs associated with a ground leases. Staff believes, however, that Nice Ventures, Inc. is the less speculative of the two proposals because Nice Ventures, Inc. has an outstanding local reputation for success in its restaurant endeavors.

G. Economic Return to the Port

In the short term, the Nice Ventures, Inc. proposal would appear to provide less rental income to the Port because of the high level of rent credits included in their proposal. These rent credits are far in excess of the Port Commission's customary policy for rent credits, and Port staff expects to negotiate these downward to ensure higher revenues to the Port. Over the long term, the Nice Ventures proposal appears to offer higher return to the Port.

H. Financial Viability

Both proposals estimate a capital investment of $6 - $8 million for the Restaurant. Both include optimistic sales projections which, if met, would justify this level of investment, ensure a healthy return to the Port and provide a solid financial return to investors. A comparison of sales projections for the two proposals is attached as Exhibit A.

I. Diversity Program

Both teams appear to be sensitive to diversity issues and exhibit a willingness to work further with the Port on this issue.

EXCLUSIVE NEGOTIATIONS

As provided in the RFP, after evaluation and determination of the most qualified Respondent(s), Port staff may recommend that the Port Commission authorize staff to enter into exclusive negotiations with a single Respondent. The Exclusive Right to Negotiate, a similar form of which was included in the RFP, is attached hereto as Exhibit B. Upon Port Commission authorization of exclusive negotiations, the selected Respondent must submit a $40,000 non-refundable fee (inclusive of the Earnest Money

Deposit already provided by the Respondent) for a four-month period of exclusive negotiations during which:

- A lease agreement and related documents for the lease and development of the Site in a final form approved by the San Francisco City Attorney will be negotiated incorporating specific terms including, but not limited to, the Port's and lessee's responsibilities, the economic parameters, development standards and requirements, and a performance schedule;
- The selected Respondent will complete its "due diligence" review of the Site, finalize financial projections, and complete preliminary development plans including, but not limited to floor plans, elevations, and renderings; for the Site;
- The selected Respondent, with the Port's assistance, will complete the project approval processes and any required supplemental environmental review.

The period of exclusive negotiations may be extended solely at the Port's option. The fee for extending the period for exclusive negotiations will be $5,000 per month payable in advance.

STAFF RECOMMENDATION

Based on Staff's analysis of the two proposals submitted for the Rincon Park Restaurant, Staff recommends that the Port Commission authorize Staff to enter into exclusive negotiations with Nice Ventures Inc. for the development of the Rincon Park Restaurant. It should be noted that Nice Ventures, Inc. has proposed two material terms with which Port staff does not agree. It proposed a rent credit of up to $6 million. It also proposed that the Port would deliver the site with utility connections in place, graded and free of hazardous materials. Port staff anticipates reaching a mutually satisfactory resolution to these issues during the exclusive negotiation period.

Prepared by Paul Osmundson
Director of Planning and Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **98-106**

WHEREAS, Charter Section B3.581 grants to the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section B3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on July 23, 1998, the Port issued a Request for Proposals for the Restaurant Development Opportunity at Rincon Park ("RFP"); and

WHEREAS, Nice Ventures Inc. and the Phoenix Project Team submitted responses to the RFP on September 30, 1998 which complied with the submittal requirements stated in the RFP and which have been reviewed and evaluated by Port Staff, with input on the financial and economic aspects of the proposals from CGMS, the Port's independent financial advisor; and

WHEREAS, based on this review, Port Staff has recommended that the Port Commission enter into exclusive negotiations with Nice Ventures Inc; and

WHEREAS, The Port Commission has reviewed the Port staff recommendation set forth in the Memorandum to Port Commissioners dated October 22, 1998, for Agenda Item 7B, and has determined that Nice Ventures Inc. best meets the qualification requirements for development of the Rincon Park Restaurant; now therefore, be it

RESOLVED, that the Port Commission hereby authorizes the Executive Director of the Port, or his designee, to execute an Exclusive Right to Negotiate agreement substantially in the form attached as Exhibit B and incorporating the economic parameters set forth in Exhibit 1 to the Exclusive Right to Negotiate outlined in the Memorandum of Agenda Item 7B for the October 27, 1998 Port Commission meeting, a copy of which is on file with the Port Commission Secretary, with the understanding that the final terms and conditions of the Lease and related documents negotiated between Nice Ventures Inc. and Port staff during the Exclusive Negotiation Period will be subject to the approval of the Port Commission; and be it further

RESOLVED, that the Port Commission does not accept the portion of Nice Ventures, Inc. proposal regarding rent credits and the condition of the site upon delivery, and authorizes staff to negotiate a satisfactory resolution of those issues during the exclusive negotiation period; and be it further

RESOLVED, that prior to considering any approval of a Lease and related documents, any environmental review required under the California Environmental Quality Act (CEQA) will be completed; and be it further

RESOLVED, The City Planning Department's Office of Environmental Review has determined that additional environmental review is not required for the project as identified in the RFP. If, through exclusive negotiations, actions and activities are identified that would require additional environmental review, and if such additional environmental review identifies significant adverse impacts that have not been mitigated, the Port retains absolute discretion to: (1) modify the project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the proposed project, (3) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse impacts of the project, or (4) approve the proposed project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts of the project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 27, 1998.

_____
Secretary

I:Rincon Park recommendation

EXHIBIT A

	PHOENIX	NICE VENTURES, INC.
Projected Sales (stabilized Operation)	$9.8 million	$19.4 million
Number of Seats	490 Indoor 370 Outdoor 120	1,000 Indoor 400 Outdoor 600
Square Feet	12,000	20,000*
Average Sales/Seat	$20,000	$19,400
Average Sales/Sq.Ft.	$816	$970

*Includes outdoor seating in the square footage

EXHIBIT B

EXCLUSIVE RIGHT TO NEGOTIATE

THIS EXCLUSIVE RIGHT TO NEGOTIATE ("Exclusive Right") is entered into as of this 27 day of October, 1998, by and between the **City and County of San Francisco** ("City"), **acting by and through its Port Commission** ("Port"), and Nice Ventures Inc., a California corporation ("Developer") upon the following facts, intentions and understandings of the parties:

A. By a Request for Proposals ("RFP"), dated July 23 1998, the Port solicited submittals of proposals from qualified parties to develop a restaurant on an approximately 20,000 square foot parcel located in the southerly portion of Rincon Park (the "Site"), located in the City and County of San Francisco. Submittals were received by September 30, and the Port Commission awarded the opportunity to enter into exclusive negotiations with the Port at its meeting of October 27, 1998, by Resolution No. 98 - 106.

B. The parties now desire to enter into this Exclusive Right to Negotiate to set forth the terms and conditions upon which Port and Developer will enter into lease negotiations and seek to complete a written lease and development agreement, and such other documents as are necessary to effect the lease of the Site (collectively, "Lease") for Port Commission approval.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Term.** The term of this Exclusive Right will be for four months, and will commence on October 28, 1998 and will expire on February 28, 1999, unless extended in accordance with Section 3 below. The term of this Exclusive Right, including any extensions, is hereinafter referred to as the "Exclusive Negotiation Period". During the Exclusive Negotiation Period, the Port will not solicit or consider any other proposals or negotiate with any other developer with respect to the development of the Site.

2. **Negotiating Fee.** Developer shall pay to Port a lump sum by cash payment in the amount of Forty Thousand and No/100 Dollars ($40,000), receipt of which Port hereby acknowledges. The $ 40,000 payment is in consideration for the right to negotiate exclusively with the Port for the Site during the Exclusive Negotiation Period, and is non-refundable whether or not the parties enter into a final Lease.

3. **Extension of Negotiating Period.**

a. Option Period. Developer shall have four one-month options (each an "Option Period") to extend the Exclusive Negotiation Period, commencing on March 1, 1999. Developer shall exercise each option to extend by written notice of the exercise of such option delivered with a cash, check or money order payment of Five Thousand Dollars ($ 5,000) per Option Period (each an "Option Payment") to Port at the address for notice set forth in Paragraph 10 below, prior to the commencement of the next Option Period. If additional environmental review is required for the project and the parties have been unable to execute a Lease prior to the expiration of the original term of this Exclusive Right (or the preceding Option Period, if applicable) due solely to the failure of the San Francisco Department of City Planning Office of Environmental Review ("OER") to complete its environmental evaluation in time for execution of a Lease, Port shall waive its rights to the applicable Option Payment. This waiver shall not apply if Developer creates a delay, including, without limitation, its failure to comply with requests for information or other OER requirements.

b. Option Payment Non-Refundable. Each Option Payment shall be non-refundable; provided, however, that the Port shall credit any Option Payment against rent due by Developer if the Developer delivers an Option Payment for a subsequent Option Period and the Port Commission approves a Lease for the Site with Developer before the commencement of that subsequent Option Period. Developer's failure to exercise any Option Period in accordance with this paragraph 3 shall extinguish all future Option Periods and shall terminate this Exclusive Right as of the last date of the Exclusive Negotiation Period or the applicable Option Period.

4. **Negotiation of Lease.**

a. Negotiation of Lease. During the Exclusive Negotiation Period, Port and Developer shall diligently meet, negotiate in good faith, and seek to complete a Lease for the Site in a form approved by the San Francisco City Attorney, incorporating

specific terms including without limitation the Port's and Developer's responsibilities, the economic parameters, development standards and requirements, and a performance schedule. The Lease will be subject to Port Commission approval. The parties are entering into this Exclusive Right to Negotiate based upon certain underlying principles and understandings developed through the RFP process, as set forth in Exhibit 1 attached hereto. The parties shall negotiate the Lease in substantial conformity with the basic principles and terms set forth in Exhibit 1; provided, however, such terms are subject to change by mutual agreement of the parties. The parties acknowledge that the terms of Exhibit 1 merely purport to set forth general principles upon which the parties have agreed; any binding Lease shall be subject to review and approval by the parties, their respective legal counsel, and the San Francisco Port Commission.

b. Final Action Subject to Environmental Review. The Port will not enter into any final Lease for the project which will allow for its development until there has been complete compliance with the California Environmental Quality Act (CEQA). Although OER has determined that additional environmental review is not required for the project as identified in the RFP, if, through exclusive negotiations, actions and activities are identified that would require additional environmental review, and if such additional environmental review identifies significant adverse impacts that have not been mitigated, the Port retains absolute discretion to: (1) modify the project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the proposed project, (3) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse impacts of the project, or (4) approve the proposed project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts of the project.

5. **Regulatory Approvals, Submittals, and Disclosures.**

a. Regulatory Approvals. The parties acknowledge that certain regulatory approvals are required for the development of the Project, including, but not limited to, all necessary approvals from the Bay Conservation and Development Commission ("BCDC"), design review by the Port and advisory design review by the Redevelopment Agency (collectively, "Regulatory Approvals"). Additional environmental review by OER, pursuant to CEQA, may be required under certain circumstances. As described in paragraph 4 above, any required additional environmental review by OER shall be completed prior to the approval of any Lease by the Port and the Board of Supervisors. The effectiveness of any such Lease shall be conditioned upon Developer obtaining all other Regulatory Approvals subsequent to approval of any such Lease by the Port Commission and Board of Supervisors.

b. Developer's Obligations. Except as provided in subsection 5.c below, Developer agrees:

(1) It shall diligently and in good faith pursue all Regulatory Approvals;

(2) It shall be solely responsible for applying for and obtaining all Regulatory Approvals, and Developer shall not seek any Regulatory Approval without first obtaining the approval of Port;

(3) It shall bear all costs associated with or complying with any necessary Regulatory Approval;

(4) It will pay and discharge any fines or penalties imposed as a result of the failure of Developer to comply with the terms and conditions of any Regulatory Approval, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

(5) To the fullest extent permitted by law, Developer agrees to indemnify and hold City, Port and their officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Developer's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

(6) It will undertake and complete its "due diligence" review of the Site, prepare financial projections, and complete preliminary development plans for the Site, including, but not limited to floor plans, elevations, and renderings.

(7) It will submit to Port, OER, BCDC and any other regulatory agency having approval over the project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies.

c. Port's Obligations. Port agrees that it will cooperate with Developer in filing for, processing and obtaining all Regulatory Approvals, and to the extent required by any regulatory agency issuing a Regulatory Approval, it will join with Developer as co-applicant in filing, processing and obtaining all Regulatory Approvals necessary for the development of the Site. Nothing contained herein shall be deemed to limit or otherwise constrain Port's discretion, powers and duties as a regulatory agency of the City with certain police powers.

6. **Non-Assignment.** The parties acknowledge that Port is entering into this Exclusive Right on the basis of the special skills, capabilities and experience of Developer. This Exclusive Right is personal to Developer and is non-assignable without the prior written consent of Port, which may be withheld in Port's sole discretion. Any attempted assignment of this Exclusive Right, or the dissolution, merger, consolidation or other reorganization of Developer or any cumulative or aggregate sale, transfer, assignment or hypothecation of more than 50% of the total capital stock of Developer shall, at the Port's option, be considered an event of default under this Exclusive Right and, upon Port's notice to Developer, shall immediately and without opportunity to cure give rise to Port's remedies provided in Section 7 hereof.

7. **Default**.

a. Event of Default. The occurrence of any of the following shall constitute a default by Developer after notice of the default and the expiration of the applicable cure period, if any:

(1) Failure to pay any sums due hereunder when due.

(2) Failure to perform or abide by any other provision of this Exclusive Right if such failure is not cured within twenty (20) days after notice has been given to Developer. If the default cannot reasonably be cured within 20 days, Developer shall not be in default of this Exclusive Right if Developer commences to cure the default within the 20-day period and diligently and in good faith continues to cure the default.

(3) Either (i) the filing by Developer of a petition to have Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors; or (ii) the filing by or against Developer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Developer or of any substantial part of Developer's assets.

b. Port's Remedies. In the event of default, Port, at its option, may terminate this Exclusive Right upon written notice to Developer, sent in accordance with Section 9 below. This remedy is not exclusive, but shall be cumulative with any remedies now or later allowed by law.

8. **Attorneys Fees.** In the event of any action or proceedings at law or in equity between the Port and Developer to enforce any provision of this offer to protect or establish any right or remedy of either party to this agreement, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses as determined by the court, including reasonable attorney's fees, incurred therein by such prevailing party; and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. For purposes of this Exclusive Right, reasonable fees of attorneys of the Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. **Notices**. Any notice given under this Exclusive Right shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Port: Director, Planning & Development
Port of San Francisco
Room 3100, Ferry Building
San Francisco, CA 94111
Telefacsimile: (415) 274-0412
Telephone: (415) 274-0546

Developer : Nice Ventures, Inc.
1606 Stockton Street
Mezzanine Level
San Francisco, CA 94133
Attention: Reed Hearon, President

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Exclusive Right shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A person may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, original, of a telefacsimile copy of the notice.

10. City Requirements

a. MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

b. Tropical Hardwood/Virgin Redwood Ban. City urges Developer not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, or any virgin redwood or virgin redwood wood product.

c. Burma (Myanmar) Business Prohibition. Developer is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a prohibited person or entity as defined in Section 12J.2(G) of the San Francisco Administrative Code. The Port reserves the right to terminate this Exclusive Right for default if the Developer violates the terms of this section.

11. Miscellaneous Provisions.

a. California Law. This Exclusive Right shall be construed and interpreted in accordance with the Laws of the State of California and City's Charter.

b. Entire Agreement. This Exclusive Right contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Exclusive Right. No prior drafts of this Exclusive Right or changes from those drafts to the executed version of this Exclusive Right shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Exclusive Right.

c. Amendments. No amendment of this Exclusive Right or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

d. Severability. Except as is otherwise specifically provided for in this Exclusive Right , invalidation of any provision of this Exclusive Right, or of its application to any person, by judgment or court order, shall not affect any other provision of this Exclusive Right or its application to any other person or circumstance, and the remaining portions of this Exclusive Right shall continue in full force and effect, unless enforcement of this Exclusive Right as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Exclusive Right.

e. No Party Drafter; Captions. The provisions of this Exclusive Right shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties.

Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this Exclusive Right.

f. Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

g. Authority. If Developer signs as a corporation or a partnership, each of the persons executing this Exclusive Right on behalf of Developer does hereby covenant and warrant that Developer is a duly authorized and existing entity, that Developer has and is qualified to do business in California, that Developer has full right and authority to enter into this Exclusive Right, and that each and all of the persons signing on behalf of Developer are authorized to do so. Upon Port's request, Developer shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

h. Waiver. No failure by Port to insist upon the strict performance of any obligation of Developer under this Exclusive Right or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Developer requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Developer. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Exclusive Right.

i. Time is of the Essence. Time is of the essence of each provision of this Exclusive Right.

WHEREFORE, this Exclusive Right to Negotiate was executed by the parties hereto on the date set forth below.

"Port"	**"Developer"**
CITY AND COUNTY OF SAN FRANCISCO, **Acting by and through its Port Commission**	
_____	_____
By: Director, Planning & Development	By
Dated:_____	Dated:_____

Approved as to Form:
LOUISE H. RENNE
City Attorney

By:_____
Deputy City Attorney

Exhibit 1: Principles and Terms for Negotiations

Landlord	Port of San Francisco
Tenant	Rincon Restaurant LLC
Party to the Exclusive Right to Negotiate	Nice Ventures, Inc.
Lease Term	25 years
Options	Three five year terms
Rent	
Annual Minimum	To be negotiated, but in no event less than $200,000 per year
Annual Minimum Rent During Construction	To be negotiated
Percentage	6.25% of gross receipts (less sales tax) versus minimum rent, with structure to be negotiated in conjunction with rent credits
Rent Credits	To be negotiated
Escalations	10% every 3 years
Premises	20,000 square foot site, as shown on attachment; 12,000 square foot building footprint at ground floor not to exceed 17 feet in height
Condition of Site	To be negotiated
Estimated Construction Cost	$6 to $8 million
Minimum Equity Contribution	$1.8 million
Loan	$4.2 - $6.2 million

Exhibit 1: Principles and Terms for Negotiations (continued)

Shareholders	GPS Park Restaurant, Inc.; Reed Hearon, Nina Ebert; Barry Traub; Craig Forrest & Laura Thomas; Nice Ventures, Inc.
City Requirements	Tenant will comply with all City requirements, including Non-Discrimination in Contracts and Property Contracts, Tropical Hardwood and Virgin Redwood Ban, City Business with Burma Prohibited, MacBride Principles - Northern Ireland, Tobacco Products Advsertising Ban, San Francisco Integrated Pest Management Program, Employee Signature Authorization Ordinance and First Source Hiring Initiative.

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PORT OF SAN FRANCISCO **MEMORANDUM**

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
www.sfport.com

October 22, 1998

TO: MEMBERS, PORT COMMISSION
Hon. President Denise McCarthy
Hon. Vice President Kimberly Brandon
Hon. Michael Hardeman
Hon. Pius Lee
Hon. Brian T. McWilliams

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to Issue a Request for Qualifications and Proposals for a Hotel Development Opportunity at Broadway and The Embarcadero.

DIRECTOR'S RECOMMENDATION: AUTHORIZE ISSUANCE OF REQUEST FOR QUALIFICATIONS AND PROPOSALS

This report provides background information on the hotel development opportunity proposed by Port staff for the Broadway Development Site located at Broadway and The Embarcadero. It also describes the hotel development opportunity recommended by Port staff, and presents the selection process, the project objectives, and the development program recommended by Port staff for this Request for Qualifications and Proposals ("RFQ/P").

BACKGROUND

The Site

The Broadway Development Site, which contains approximately 108,292 square feet, consists of the following parcels that are shown on the attached Site Plan.

Parcel	Size (sq ft)	Location
Seawall Lot 323	2,965	On The Embarcadero at Vallejo
Seawall Lot 324	39,463	Corner of Broadway and The Embarcadero
Seawall Lot 322-1	37,823	On Front Street between Broadway and Vallejo
Parcel A	4,870	At the end of Vallejo Street

THIS PRINT COVERS CALENDAR ITEM 7C

Parcel	Size (sq ft)	Location
Parcel B	4,004	At the end of Davis Street at The Embarcadero
Parcel C	10,795	On Davis Street between Broadway and Vallejo
Parcel D	8,372	At the end of Davis Street at The Embarcadero

The parcels comprising the Broadway Development Site are all presently being used as surface parking lots for daily and monthly parking. Parcel C is owned by the City and County of San Francisco, pursuant to a transfer from the State of California to the City under S.B. 181. The Port does not currently have jurisdictional control of Parcel C, but the jurisdictional transfer of this parcel to the Port is being negotiated. If for some unforeseen reason Parcel C is not transferred to the Port's jurisdiction, the selected developer would be entitled to submit a revised project proposal for Port Commission consideration.

The *Waterfront Land Use Plan,* adopted by the Port Commission on June 19, 1997, identifies the seawall lots comprising the Broadway Development Site as having "high near-term revenue-generating potential for the Port, and optimizing revenue should be a strong consideration in their development." The Waterfront Plan also states that a hotel use is an acceptable use for these seawall lots, which are among the few parcels on Port property for which hotels are indicated as an acceptable use.

Advisory Group

The *Waterfront Land Use Plan* also states that, as part of the site-specific development process, an advisory group is to be established for each major project in order to provide input and guidance to the Port as it defines the development concept to be incorporated into the request for qualifications/proposals for the project. As described in the informational report presented to the Port Commission at its August 11, 1998 meeting, Port staff established the Broadway Development Site Advisory Group ("Advisory Group") to provide input on the development of a hotel on the Broadway Development Site. The Advisory Group was comprised of an individual knowledgeable in hotel development; Port tenants located in the Northeast Waterfront; and representatives of nearby neighborhoods, including Telegraph Hill, Chinatown, Golden Gateway, and the Northern Waterfront business community. (A list of the members of the Broadway Development Advisory Group is attached.)

The Advisory Group met five times from August 10 through September 17, 1998, and input to the Advisory Group was provided by independent design and financial consultants retained by the Port. The Advisory Group made a number of recommendations concerning planning and design issues, and these recommendations have been incorporated into the Project Planning and Design Objectives, discussed below.

THE OPPORTUNITY

Port staff recommends that the Port solicit qualifications and proposals from qualified developers to ground lease the Broadway Development Site from the Port and to develop

and operate a first-class full-service hotel on the site. The respondents to the RFQ/P would need to demonstrate extensive experience in financing, developing and managing a full-service hotel of first-class quality. Because the ground lease with the Port will be unsubordinated to any financing obtained by the developer, the respondents would need to demonstrate their ability to access equity and/or subordinate mortgage capital required to fund the development.

The development program for the site envisions a hotel of three to five stories consisting of 350 to 400 rooms, with banquet and meeting space, eating/drinking establishment(s), parking spaces as required by the S.F. Planning Code plus surplus parking to serve visitors to the waterfront, and other amenities normally found in a full-service hotel, such as a fitness center and services for business travelers.

The Port would contract with the selected developer through a development agreement and a 66-year ground lease, the terms of which would be established during the exclusive negotiation period.

SELECTION PROCESS

Port staff recommends a selection process which would consist of the following steps:

1. Qualifications Phase – submittal of qualifications (which would be accompanied by a $100,000 earnest money deposit that would be refundable to all respondents except the one with whom the Port enters into exclusive negotiations), which would be evaluated by Port staff with assistance from an independent financial consultant, to determine the most qualified respondents;

2. Proposals Phase -- submittal of proposals in response to the RFQ/P by the most qualified respondents selected by Port staff with assistance from an independent financial consultant; and

3. Exclusive Negotiations Phase -- selection of a developer by the Port Commission and execution of an Exclusive Right to Negotiate, which would constitute an interim contract to be utilized during the initial project approval process while the development agreement and ground lease are being negotiated and finalized, and while environmental review of the project is being conducted. The exclusive negotiation period would be for 6 months, with two 6-month conditional options to extend.

PROJECT REVIEW AND APPROVAL PROCESS

The selected developer would be responsible for securing all regulatory approvals for the project. While the Port would cooperate and support the environmental review and entitlements process, the responsibility and cost of obtaining these approvals would be borne by the developer. Upon completion of necessary environmental review, the Port Commission could approve a development agreement, a 66-year ground lease and related documents, which would be subject to the approval of the City of San Francisco Board of

Supervisors. Approvals would also be required from the City Planning Department, including approval of a conditional use authorization.

Issuance of the RFQ/P would not commit the Port Commission to approving the project. The Port would reserve its discretion as to whether to enter into a development agreement or ground lease until the environmental review process is completed in compliance with the California Environmental Quality Act (CEQA). The selected developer should anticipate revisions to the proposed project concept as a result of the review process, as well as new information concerning the development site. The Port would work with the selected developer to achieve a final project that is mutually acceptable.

PROJECT OBJECTIVES

Port staff recommends that the hotel development on the Broadway Development Site address the objectives indicated below. These objectives are based upon: the goals, policies, objectives and development standards contained in the Port's *Waterfront Land Use Plan* and in the *Design and Access Element;* input from independent design and financial consultants retained by the Port; and recommendations from the Advisory Group.

Planning Objectives

1. Maximize the Port's rental revenue from the site in order to help the Port achieve its public trust objectives, which are to support maritime industries, provide public-oriented activities and open space improvements on the waterfront, and maintain Port facilities.

2. Create a landmark development which highlights the intersection of Broadway and The Embarcadero as a gateway to Chinatown and North Beach, and create an orientation point along the waterfront.

3. Create a dynamic and beautifully-designed hotel, with an inviting lobby open to the public, which is not primarily tourist-oriented, but attracts a mix of commercial groups, business travelers, leisure users, neighborhood residents and visitors to the waterfront.

4. Activate and revitalize the waterfront edge in the Northeast Waterfront area, establishing a daytime and nighttime presence in the area.

5. Unite and integrate the land side neighborhoods with the waterfront and make the area inviting to local residents as well as visitors.

6. Respect and complement the historic and architectural character of the Northeast Waterfront Historic District.

7. Provide a development program that accommodates parking for hotel guests as well as surplus parking for visitors to the waterfront.

8. Provide meeting space in the hotel which, when not required for hotel operations, could be rented at reduced rates to community groups.

Financial Objectives

1. Invest substantial capital improvements in the site.

2. Guarantee a minimum monthly base rent to the Port.

3. Provide the Port with percentage rent on gross receipts (after deducting sales and hotel taxes), no less than the following:

   - 5% of gross receipts from rooms
   - 2% of gross receipts on food and beverage which are part of hotel operations, and 3% of gross receipts on food and beverage which are generated by subtenants.
   - 10% of telephone gross receipts
   - 5% of parking gross receipts
   - 5% of gross receipts from other operations, including retail

   The percentage rental rates stated above would be a minimum expectation. Respondents would be encouraged to propose higher percentage rental rates. Percentage rent would be offset by base rent.

4. Provide the Port with guaranteed rental revenue during the construction period.

5. Provide annual adjustments in the base rent for cost of living and/or other participation in future increased revenues. Provide for adjustment of the base rent at the end of the 25th year of the term and at the end of each ten-year period thereafter, which adjustment shall be the then market return of the then land value based on a survey of comparable waterfront hotels on the West Coast.

The actual terms of the ground lease would be negotiated by Port staff based upon the terms proposed by the respondent and would be subject to final approval by the Port Commission and the San Francisco Board of Supervisors.

Design Objectives

1. Meet the Port's development program and the design guidelines set forth in the Waterfront Plan's Design & Access Element, as well as pertinent policies of the City's General Plan, which address such issues as views, height, building massing, orientation, transparency, building materials, exterior elevations, articulation and character.

2. Construct buildings compatible with the rich architectural character of the Northeast Waterfront Historic District and complementary to the architectural features of the pier bulkhead buildings.

3. Express the boldness and grandeur of The Embarcadero through strong building form and details.

4. Maintain and enhance the view corridor to Pier 9 from Vallejo Street and views of the waterfront from Broadway.

5. Use building height at or near the sidewalk edge to emphasize the corner of Broadway and The Embarcadero as a gateway to the Chinatown and North Beach neighborhoods. Use architectural features compatible with the historic character of the area to highlight this entrance. The Advisory Group has specifically requested that a cupola-type feature not be utilized on this corner. Instead, create a more transparent pedestrian entrance at this corner.

6. Step building height down to 40 feet along the Embarcadero frontage of Seawall Lot 324; maintain a maximum 40-foot height on the entire Seawall Lot 323 and Parcel B; allow increased building height along the Broadway and Davis frontage of Seawall Lot 324 (up to 65 feet); and allow building height on Seawall Lot 322-1 and Parcel C to a maximum height of 65 feet. The Advisory Group recommended that the project not exceed a 65-foot height limit, even though the S.F. Planning Code allows an 84-foot height limit on portions of some of the parcels. Parcel D is to remain open space, and must be landscaped and maintained for public use. Parcel A must remain open to retain the Vallejo view corridor. It should be noted that building height limits refer to occupiable areas.

7. Provide an open feel utilizing areas such as a courtyard, deck, atrium or terrace, and provide transparency on the ground floor of the buildings, particularly facing The Embarcadero and Broadway.

8. Provide a strong pedestrian entrance at the corner of Broadway and The Embarcadero, with service entrances and vehicle entries on Vallejo and Davis Streets.

9. Provide complementary retail uses on the ground floor along Broadway, if feasible.

10. Provide streetscape lighting, trees and other amenities.

11. Complement the area's evolving mixed-use residential and commercial neighborhoods.

Reflecting the Port's commitment to encouraging diversity in design and construction contracting, the selected developer would be expected to work with the Port to establish MBE/WBE utilization goals for subcontractor participation in design and construction of the project.

DEVELOPMENT PROGRAM

Port staff recommends that the hotel developed on the Broadway Development Site provide the amenities of a first-class full-service hotel. While the Port should not dictate the number of rooms, the number of parking spaces, the complementary uses, or the exact square footages to be devoted to the various uses, staff recommends that proposals meet the following minimum requirements in order to be responsive:

Total Guest Rooms:	300+
Total Parking Spaces:	Three times the S.F. Planning Code requirement
Banquet & Meeting Space:	10,000 square feet
Features:	Public lobby and one or more eating/drinking establishments

Other amenities characteristic of a first-class full-service hotel, such as services for business travelers, a fitness center, and/or a swimming pool, should be provided, but the composition of these amenities should be proposed by the developer. Retail uses, if feasible, should be encouraged on the ground floor along Broadway. Surplus parking beyond code requirements should be included in the hotel project to serve visitors to the waterfront, although parking to support hotel operations would have priority.

Through its consulting architect and hospitality industry advisors, Port staff has developed the following illustrative example that would achieve the objectives recommended for this project:

Building Area on all parcels:	421,315 square feet
Building Heights:	3-5 stories, plus basement on 2 parcels
Total Guest Rooms:	360
Total Parking Spaces:	284 cars (73 required by code)
Banquet & Meeting Space:	15,000 square feet
Features:	Atrium lobby; free-standing restaurant with patio; in-house restaurant; indoor pool and lockers; fitness center; motor court entry with fountain; terraces; pre-function space; areas for kitchen, laundry and other back-of-the-house space

Parcel C and Adjacent Parcels

Parcel C is owned by the City and County of San Francisco, and the Port is working with City staff to arrange for the transfer of jurisdictional control of Parcel C to the Port. Proposals submitted in response to this RFQ/P should presume that Parcel C will be a part of the Broadway Development Site. If for some unforeseen reason Parcel C is not transferred to the Port's jurisdiction, the selected developer would be entitled to submit a revised project proposal for Port Commission consideration.

Parcel C is adjoined by two privately-owned land parcels (60 Broadway and 777 Davis Street), each of which contains a small office building. Respondents to the RFQ/P may desire to incorporate one or both of these privately-owned parcels into their project.

However, Port staff believes that the Port should not purchase these private parcels, and that these private parcels should not be incorporated into the development project proposals to be evaluated. The Port's review of proposals submitted in response to this RFQ/P should be limited to proposals that cover only the property comprising the Broadway Development Site. Proposals that include other properties should not be considered in evaluating responses to the RFQ/P.

If respondents wish to include one or more private parcels in their hotel development, then during the exclusive negotiation period, the Port could consider an alternative hotel design that includes such parcels. In this case, the percentage rent due to the Port should be calculated as a fraction of the total gross receipts earned from the entire project, the numerator of which should be the total square footage of the Port-owned/controlled parcels and the denominator of which should be the total square footage of land comprising the entire hotel project. In addition, the entire expanded project should be required to meet the objectives and program criteria set forth in the RFQ/P.

SCHEDULE

If authorized, Port staff intends to proceed with the development solicitation according to the following schedule, which would be subject to change:

• Solicitation of Qualifications and Proposals:	November 6, 1998
• Pre-Submittal Conference and Tour of Site:	December 3, 1998
• Developer Qualifications Due:	January 6, 1998
• Solicitation of Proposals from "Short List":	February 11, 1999
• Developer Proposals Due:	April 12, 1999
• Developer Selection for Exclusive Negotiations:	May 25, 1999
• Exclusive Negotiation Period:	June 1, 1999 to November 30, 1999

Attachments: List of Advisory Group members
Site Plan

Prepared by: Paul Osmundson, Director,
Planning & Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION No. 98-107

WHEREAS, Charter Section 3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, a hotel development on the Broadway Development Site, as defined in the memorandum for item 7C of the Port Commission's October 27, 1998 meeting, is consistent with the goals, policies, objectives, and development standards contained in the Waterfront Land Use Plan; and

WHEREAS, Parcel C of the Broadway Development Site is under the jurisdiction of another City agency; and

WHEREAS, Port staff has worked with design and financial consultants and with the San Francisco Planning Department in establishing the development concept for the Broadway Development Site, and has received the advice and counsel of the Broadway Development Site Advisory Group on this development concept; and

WHEREAS the Port Commission now wishes to proceed with the development of the Broadway Development Site with a first-class full-service hotel; and

WHEREAS the Port is committed to diversity in the design and construction opportunities represented by this project; and

WHEREAS issuance of a request for qualifications and proposals does not commit the Port to proceeding with the project, and the Port reserves discretion as to whether to approve a ground lease or development agreement for the project until after environmental review has been completed in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS Port Commission policy requires competitive bidding of this opportunity; now, therefore, be it

RESOLVED, that the Port Commission hereby authorizes and directs Port staff to issue a request for qualifications and proposals to ground lease the Broadway Development Site and to develop and operate a first-class full-service hotel in accordance with the terms set forth in the memorandum and attachments to the Port Commission for item 7C

of the Port Commission's October 27, 1998 meeting; and , be it further

RESOVED, that the Port Commission hereby authorizes and directs the Port Director, or his designee, to take administrative action to secure the jurisdictional transfer to the Port of Parcel C which is not under Port jurisdiction.

I hereby certify that the Port Commission at its meeting of October 27, 1998 adopted the foregoing Resolution.

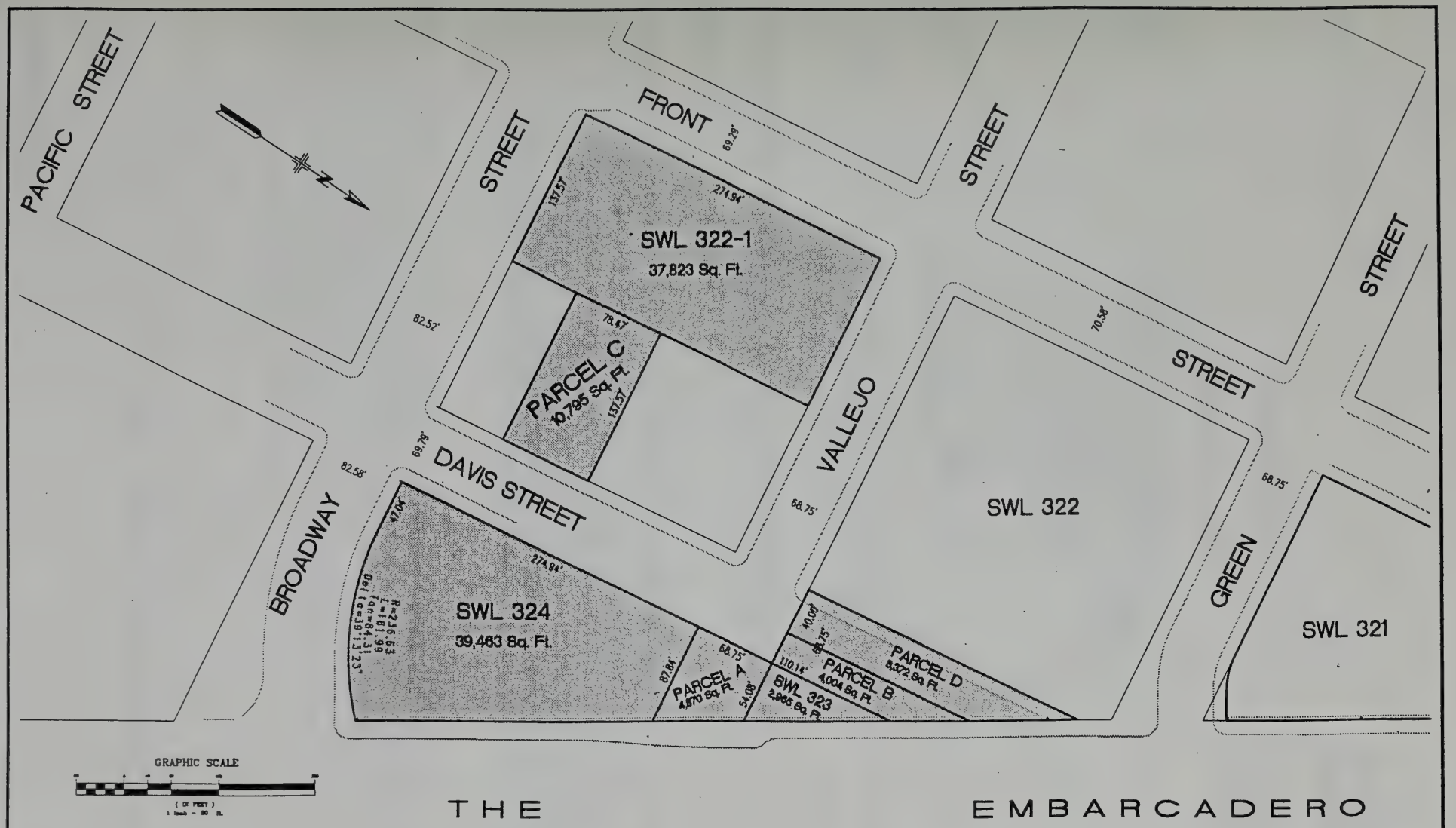
_____

Secretary

\\Pacifica\PLANNING\KIRK\Agenda Memo Broadway RFQP

BROADWAY DEVELOPMENT SITE
ADVISORY GROUP

Chairman Michael Franklin	General Manager Levi Plaza
Gentle Blythe	Community Organizer Telegraph Hill Neighborhood Center
Jordan Luttrell Alternate: R.T. Freebairn-Smith	Co-Chair Telegraph Hill Dwellers
Jasmine Kaw Alternate: Whitney Smith	Neighborhood Improvement Coordinator Chinatown Community Development Center
Carrie Ludwig Alternate: Monica St. Geme	Golden Gateway
Robert B. Wilhelm Alternate: John Love	Past Chairman, Visitors & Convention Bureau Former General Manager, Westin St. Francis
Carlos Afre	Owner You & Leisure Tours and Travels, Inc.
Flicka McGurrin	Owner Pier 23 Café
Craig McCabe	Vice President Hornblower Yachts, Inc.



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PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

APPROVED BY
SAN FRANCISCO PORT COMMISSION

DATE _____

CHIEF HARBOR ENGINEER

BROADWAY - EMBARCADERO HOTEL DEVELOPMENT SITE SITE PLAN

DESIGNED BY: J. SOBOL	CHECKED BY: ----
DRAWN BY: AMN	DATE: 20 OCT 98
CONTRACT NO. CONTRACT	SCALE: 1" = 80'
DRAWING NO. XXXXX-XX-XX	SHEET NO. 1 OF 1 SHEETS

PRINTED: 20 OCT 98 -- 2:00 pm CADFILE: G:\Civil Cadd\Land Maps\Vacated\STRT324\SHT01.dwg VIEW: P1

PORT OF SAN FRANCISCO

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MEMORANDUM

October 21, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Selection of Pier 30-32 as the Preferred Location for Development of the James R. Herman Cruise Ship Terminal

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

Background

A new cruise terminal is required in San Francisco to efficiently meet the current needs of cruise lines and passengers, as well as the expected increase in future cruise business. Pier 35 is inadequate for several reasons, including the narrow width and aprons, limited occupancy, high operating costs, lack of passenger parking, unsightliness, minimal bus and taxi waiting areas and chaotic internal and external circulation. To effectively handle its current and future business needs, staff recommends building a new, modern cruise terminal at Pier 30-32.

Port staff prepared a Draft Background Report on the advantages and disadvantages of Pier 35, Pier 27-29, and Pier 30-32 as potential sites for a modern cruise terminal and presented the findings in a public presentation to the Port Commission on September 8, 1998. Following public input and in-depth analysis of various issues, staff finds Pier 30-32 to be the best possible location for a modern cruise terminal development capable of handling the diverse and changing needs of the cruise industry.

THIS PRINT COVERS CALENDAR ITEM NO. **7D**

This report summarizes the multiple issues that were researched and analyzed in order to make today's recommendation, including current trends in the cruise industry, industry requirements for a new cruise terminal, conclusions from these two sections, public input, and further analysis of specific points raised by the Port Commission at the public meeting. The report concludes with recommended next steps.

TRENDS IN THE CRUISE INDUSTRY

There are several trends in the cruise industry that the Port considered in planning for a new or redesigned cruise terminal on the San Francisco waterfront:

1. *Cruise lines are merging and competitor ports are modernizing.* Although there are more cruise ships looking for new destinations, they are controlled by fewer companies, requiring Ports to be more creative and proactive in marketing their terminals. Approximately 100 ports are vying to attract 20 cruise lines to their cities. Many of these ports are racing to compete for these mega-customers by either initiating their own capital programs or working in partnership with major cruise lines to modernize or build new terminals to handle new ships.

2. *Cruise ships are getting longer, wider and taller.* While ships currently average 650 to 900 feet in length, 90 feet in width, and carry 1,500 passengers, the next generation of ships are expected to reach 1,030 feet in length, 130 feet in width, and carry more than 3,000 passengers. A new cruise terminal must accommodate these trends by providing longer, wider berths, higher terminal gangways and lobbies, and ample interior space for terminal operations and passenger accommodations. The berth capacity of ships in current newbuild programs actually exceeds the total capacity of the fleet in service today.

3. *The cruise industry is growing rapidly, particularly in the 2-5 day cruise sector.* If the Passenger Services Act (PSA), an 1886 federal statute that limits coastal cruising, is amended, San Francisco is well positioned to take advantage of such growth in this market sector as a mid-coastal city near other potentially popular cruise destinations such as Monterey, Big Sur and Santa Barbara.

4. *Travelers tend to revisit cities first visited on a cruise during future travels.* By providing cruise passengers with a convenient, fun and positive experience at its cruise terminal, San Francisco will encourage passengers to revisit the City during future travels.

5. *Shorter cruises for company retreats and conventions are gaining in popularity.* Cruises are an ideal way for companies to bring together employees in a fun and relaxed atmosphere. Company cruises are often "cruises to nowhere," in which passengers enjoy on-board entertainment, restaurants, recreational opportunities and the scenic landscape of a particular locale, while rarely leaving the ship.

6. *Cruise ships are staying in ports of call for shorter amounts of time.* San Francisco should locate its cruise terminal near popular destinations to maximize the amount of

time cruise passengers can spend at these attractions and the amount of tourist dollars spent in the City.

7. *Amending the PSA could significantly increase the amount of cruise business San Francisco receives* each year. If the PSA is amended, reports estimate that San Francisco could receive 157 calls in the year 2003, versus the current annual average of 45 calls, and experience a 288% increase in passengers. Even without changes to the PSA, however, the number of cruise passengers passing through the Port is projected to increase by 70%, to an estimated 91,000 in 2003.

TERMINAL REQUIREMENTS

The following requirements for a modern cruise terminal have been identified based primarily on cruise industry trends and an assessment of cruise terminals in other cities:

1. Berths: Two berths of at least 1,000 feet in length and 35 feet in depth, preferably that require little or no dredging, allow safe and easy maneuvering of cruise ships and tug boats, and at least one of which is oriented parallel to the shore to provide for more efficient docking and operation.

2. Dockside facilities: Ability to safely and efficiently off-load, service and re-provision the ship: Minimum 50 foot wide aprons, direct street access for service vehicles, a continuous passenger bridge, flexible gangways to service two ships simultaneously (2 each for mega-ships, one each for average ships), secure, covered storage area, and utility hook-ups for ships.

3. Terminal Building: A two story, 80,000 square foot terminal building (gross floor area) to house comfortable and attractive passenger check-in and waiting lounge areas, U.S. Customs processing areas, baggage check, visitor information services, and other amenities such as public restrooms. This size will provide for simultaneous Port of Embarkation ('POE') and Port of Call ("POC") operations. Two POEs would require more space.

4. Security: An isolated and securable security zone meeting the requirements of the U.S. Coast Guard's security statutes.

5. Vehicular Circulation: Adequate passenger drop-off and pick-up areas per ship with room for 25 buses, 20 taxis and limousines, truck loading and unloading, approximately 7,000 square feet for private automobile loading and unloading, and at least 250 parking spaces for passengers.

6. Mixed use development: Space for major revenue-generating mixed use commercial development immediately adjacent to or near the terminal to help support the cost of the terminal and enliven the terminal when ships are not in port. This is especially important for seasonal markets that would otherwise have an underutilized, stand-alone terminal.

7. Public Access and Open Space: Ample space for public access and open space, including a bon voyage area.

8. Accessibility to Attractions and Airport: Proximity or easy access to local and regional attractions and the Airport.

CONCLUSIONS

Pier 30-32 meets nearly all the above requirements for a modern cruise terminal. The following lists the benefits and opportunities associated with a terminal development at this site:

Opportunities

- The main berth on the east face is 40 feet deep, requires no dredging and is parallel to the shore, making it the easiest berth at which to dock a cruise ship.

- The large, rectangular shape of the pier, and the lack of existing structures on the site, will allow for an efficient layout that meets the industry standards for dockside facilities, a terminal building with security, on-pier vehicular circulation and public access and open space.

- The availability of Seawall Lot 330 for a mixed-use development, along with the potential for other commercial uses on the pier itself, make Pier 30-32 the most developable site from an economic and land use perspective.

- The site is in the heart of a burgeoning and vibrant mixed-use neighborhood that will put passengers within walking distance to Pacific Bell Park and the Pavilion Building, South Beach, the planned Mission Bay entertainment complex, the Financial District and the Ferry Building.

- Pier 30-32 has the best access to the Airport via two freeways, and has excellent access to major tourist attractions via bus lines, light rail (particularly once demographic changes justify the planned operation of a continuous MUNI service from Fisherman's Wharf to the Ballpark), ferry services, BART and the Bay Bridge.

- The views to and from the ships as they sail under two bridges and along the entire length of San Francisco's waterfront will be breathtaking.

- The absence of historical buildings on the site lessens the complexity and time associated with planning for and developing a major cruise terminal project.

- Developing the cruise terminal at Pier 30-32 would allow a recreational pier development or other uses to be pursued at Pier 27-29, which could uniquely utilize the existing 220,000 square foot clear span building at Pier 27.

While Pier 30-32 is the best location of the three alternatives studied, a few constraints must be taken into consideration when planning for a new terminal development at the site. The following list identifies and discusses these constraints:

Constraints

- Pier extensions are needed.

Pier extensions are needed to the east and south berths to accommodate the increasing lengths of cruise ships. However, staff believes that the advantage of having at least one berth parallel to shore and not require any dredging at that berth is greater than the disadvantage of having to construct the extensions. Pier 30-32, while requiring an upfront capital investment for the extensions, will be safer and more cost-effective in the long run. It should be noted that extensions would also probably be required at Pier 27-29.

- The south berth will require maintenance dredging.

The south berth is currently 23 feet deep and requires dredging to accommodate incoming cruise ships. However, Pier 27-29 also would require regular dredging to maintain the recommended water depth. Fortunately, dredging at Pier 30-32 should be considered by BCDC as maintenance dredging rather than new dredging, saving the Port considerable time and money. New dredging, unlike maintenance dredging, would require lengthy & costly environmental review and upland disposal.

- Currently, there is no direct access to tourist attractions in the Northern Waterfront.

Port staff understands the importance of having easy and direct access to Fisherman's Wharf from the cruise terminal, wherever it is located. While Pier 30-32 is farther from the Northern Waterfront than Pier 27-29, a number of factors assuage this significant concern.

Rail tracks are currently being laid as part of the Mid-Embarcadero Roadway Improvement Project to eventually create a direct link via rail between the Southern and Northern Waterfronts. While the current MUNI operating budget does not provide funds for its operation, there is strong potential for the direct link to be funded when enough demand is established. With Pacific Bell Park, Mission Bay, and possibly a new cruise terminal, the demand for this direct link will increase considerably.

To get cruise passengers from Pier 30/32 to major tourist destinations, including but not limited to Fisherman's Wharf, a comprehensive bus and/or shuttle system should be studied as part of the new cruise terminal development. Staff research conducted on cruise terminals in Vancouver, Seattle, Miami, Tampa, and Boston indicates that all but Seattle have major tourist destinations beyond walking distance from the terminal. To access these attractions, passengers primarily use shuttle or charter buses that leave directly from the terminal. Information booths direct passengers to the appropriate buses, and ticket sales are often prearranged through tour packages offered by cruise lines. Representatives from these Ports stated that shuttle buses work well in efficiently bringing passengers to their destinations of choice.

Finally, the area-surrounding Pier 30-32 is becoming a destination in its own right. The major developments underway in this vibrant mixed-use community, including the Ballpark and Mission Bay, will ensure exciting attractions for cruise passengers and other visitors to the City's waterfront. Indeed, one of San Francisco's greatest strengths is its abundant and diverse tourist attractions beyond the traditional destinations.

- Seismic upgrades are needed.

Pier 30-32 must be upgraded to improve seismic safety as part of any development program, whether or not a new terminal is built there. If a new terminal is not built, an alternative development project at that location, regardless of its type, would still necessitate seismic improvements. Thus, the need for seismic upgrades does not necessarily preclude or slow down a development opportunity on the pier. Furthermore, repairs are also needed on Pier 29's substructure and seawall, and additional improvements may still be needed on Pier 27.

PUBLIC INPUT

Eleven people gave public testimony at the Port Commission public hearing on September 8th. The speakers included representatives from the Metropolitan Stevedore Company, which operates the existing terminal at Pier 35, the marine and travel industries, the Bar Pilots' Association, residential groups, an architectural firm and the Embarcadero Cultural Center International. The speakers were in general agreement that the existing terminal at Pier 35 is not adequate and a new cruise terminal is needed in San Francisco. Seven of the speakers endorsed Pier 30-32 as the preferred site alternative, one supported Pier 27-29, and three did not make a specific endorsement.

The general arguments in favor of Pier 30-32 are that it can accommodate a "world class terminal" befitting of San Francisco's stature, it is closer to the Airport, major developments are making South Beach an increasingly attractive community, new jobs and business opportunities would be created (including for at-risk youth), and it has the potential to provide hotel accommodations and services on the adjacent seawall lot. Pier 27-29 was endorsed by one speaker due to its proximity to tourist attractions.

Representatives from residential groups expressed concerns over traffic, parking, and the need to establish a "good neighbor policy" in connection with a terminal development at Pier 30-32. Another speaker recommended that the Port take into consideration the needs of elderly people when designing the new terminal.
In a letter to the Port, the South Beach Citizens Advisory Committee expressed specific concerns related to traffic and parking issues, the potential height of a hotel development on Seawall Lot 330, the potential for retail shops like those found at Fisherman's Wharf, and the need for an equally thorough analysis of Pier 27-29 and Pier 30-32.

The Port intends to address traffic issues and other project impacts through environmental review of the project. Height concerns will be addressed through development standards devised with the help of the community itself, and through development and design parameters set forth in the developer Request for Proposals. Furthermore, height and design concerns will be addressed through joint design review between the City and the Port. Port

staff agrees that the type of retail development found at Fisherman's Wharf would not be appropriate for a cruise terminal development at Pier 30-32 and Seawall Lot 330. Finally, Port staff believes that the analysis conducted to date has provided the information necessary to make the decision regarding which site to pursue for the cruise terminal, while acknowledging that additional planning and investigation is needed as part of preparing the RFP, as well as through the environmental review process.

ANALYSIS OF POINTS RAISED BY THE PORT COMMISSION

Following public testimony at the September 8th public meeting, the Port Commission instructed staff to come back with a recommendation for a preferred site based on further analysis of the following issues: cost and cost effectiveness, choices for and synergy of other uses in addition to the terminal, transportation access, public access, vehicular access, probability of success of the alternative sites and recommendation for a flexible process. A discussion of each of these factors follows:

- **Cost and Cost Effectiveness**

Dredging at Pier 27-29 will initially cost approximately $2.68 million, and subsequent biannual dredging would cost approximately $1 million. Initial dredging at Pier 30-32 would cost approximately $1.25 million, and biannual dredging would cost about $500,000. Clearly, Pier 30-32 is the preferred location when considering dredging costs.

The exact cost of seismic and structural upgrades would depend on the full mixed use program for the sites. Although Pier 27 has recently been repaired, potential costs of rehabilitating the historic structures on Pier 29 could be considerable. Staff believes that Pier 30-32 would most likely be the more cost effective location of the two due to the large, vacant seawall lot that is available directly across the site for a revenue-generating development. Detailed cost estimates for the entire project at Pier 30-32 will be forthcoming as part of the pre-development process for the site.

- **Choices for and Synergy of Other Uses**

The Waterfront Land Use Plan designates acceptable land uses for Piers 27-29, 30-32, and Seawall Lot 330. Acceptable uses on Pier 27-29 include Cargo Services, Ferry and Excursion Boats, Historic Ships, Maritime Office, Maritime Support Services, Passenger Cruise Ships, Temporary and Ceremonial Berthing, Water Taxis, Open Space, Public Access, Assembly and Entertainment, General Office (except in bulkhead buildings fronting The Embarcadero), Museums, Retail (includes restaurants), Recreational Enterprises, Wholesale Trade/Promotion Center, and Community Facilities. Acceptable uses on Pier 30-32 include Ferry and Excursion Boats, Historic Ships, Maritime Office, Maritime Support Services, Temporary and Ceremonial Berthing, Passenger Cruise Ships, Water Taxis, Open Space, Public Access, Assembly and Entertainment, Museums, Retail (includes restaurants), Recreational Enterprises, Visitor Services, Wholesale Trade/Promotion Center, and Community Facilities.

While many of the same uses are allowed on both sites (Piers 27-29 and 30-32), Pier 30-32 is unique in that the development program can include the adjacent 2.8 acre Seawall Lot 330. Acceptable land uses on Seawall Lot 330 include Residential, Assembly and Entertainment, Hotels, Parking, and Retail (includes restaurants). Redevelopment of the Seawall Lot in conjunction with the pier provides the opportunity to create a better synergy of uses between land and water-side development and an advantageous mix of uses that will activate the terminal year round. The Waterfront Plan strongly encourages that

> "where feasible, new commercial development on piers should be part of mixed use developments which include maritime, open space and public access activities, and which bring day and nighttime activity to the waterfront. Many Port sites are organized into "Waterfront Mixed Use Opportunity Areas," combinations of piers and seawall lots where most major changes are expected to occur along the waterfront."

Staff believes that the Pier 30-32 and Seawall Lot 330 sites together allow for a cohesive development that will include uses on both sides of The Embarcadero that complement each other and encourage people to cross to the water. This opportunity for a synergy of uses does not exist at Pier 27-29.

- **Transportation and Vehicular Access**

Further environmental review will likely be required for this project to analyze the full scope of issues relating to transportation and vehicular access to and from a potential cruise terminal at Pier 30-32. Given the availability of multiple modes of transport to the facility, including light rail, buses, BART, ferries, the Bay Bridge and two freeways, a variety of recommended routes to and from the terminal would likely be identified. In addition, the combined size of Pier 30-32 and Seawall Lot 330 would offer adequate space to accommodate parking and waiting areas for autos, taxis, buses, and other vehicles bringing passengers to the facility. The feasibility of integrating a comprehensive bus and/or shuttle service as part of the cruise terminal development will also be considered.

- **Public Access and Open Space**

Both Piers 27-29 and 30-32 are large enough for adequate public access and open space areas. Pier 30-32 offers the added flexibility of planning for these areas from scratch in a residential community where they are especially needed.

For safety and security measures, U.S. Customs may limit the amount of public access and viewing areas allowed within and around the terminal. The terminal development program would accommodate these restrictions to ensure maximum public safety.

- **Probability of Success**

Time is of the essence in planning for a successful cruise terminal development at either Pier 30-32 or Pier 27-29. A new, modern cruise terminal development could take approximately three to four years to complete. With a strong economy and development climate, San

Francisco should begin to develop and purse a terminal development program as early as possible

Unlike Pier 27-29, Pier 30-32 could accommodate revenue generating mixed-use development at Seawall Lot 330. Other Ports and cruise industry experts agree that Ports with seasonal markets should incorporate a mix of uses in their terminal developments in order to continuously activate the space, attract visitors to the waterfront and stimulate the local and regional economy throughout the year. A revenue generating mixed-use component would also help subsidize the development and ongoing operational costs of a cruise terminal development at Pier 30-32.

Building a terminal from scratch at Pier 30-32 would offer maximum flexibility in designing a development concept. Pier 27-29 would constrain the development concept due to the existing structures on the site and the lack of an adjacent seawall lot.

- **Proposed Process**

The proposed process for the cruise terminal development will include forming an Advisory Group made up of industry experts and community members, working with the South Beach Citizens Advisory Committee, working with consultants experienced in major cruise terminal development projects, and issuing a developer Request for Proposals.

Issues of particular concern that will need to be studied and worked on in consultation with the South Beach Citizens Advisory Committee include the height of the commercial development on Seawall Lot 330 and the potential traffic impacts of a cruise terminal development on Pier 30-32.

STAFF RECOMMENDATION

Staff recommends that the Port Commission direct staff to prepare a developer Request for Proposals for a mixed-use development at Pier 30-32 and Seawall Lot 330 that includes the new James R. Herman Cruise Ship Terminal as a major component of the project.

Prepared by Paul Osmundson, Director of Planning & Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-108

WHEREAS, Under the City and County of San Francisco Charter, Section B3.581, the Port of San Francisco has the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, James R. "Jimmy" Herman served on the San Francisco Port Commission with distinction for 14 years under Mayors Feinstein, Agnos, Jordan and Brown and provided the Port with wisdom, guidance, and support for maritime industry in general and the passenger cruise terminal in particular; and

WHEREAS, the Port Commission now wishes to proceed with the development of the new James R. Herman Cruise Ship Terminal at the Port of San Francisco as part of a mixed-use project consistent with the Port's Waterfront Land Use Plan; and

WHEREAS, Port Commission policy encourages competitive bidding of retail opportunities unless impractical or impossible; now, therefore, be it

RESOLVED, that the Port Commission hereby authorizes and directs Port staff to form as Advisory Group pursuant to the Waterfront Land Use Plan and to prepare a Request for Proposals for a mixed-use development at Pier 30-32 and Seawall Lot 330 that includes the new James R. Herman Cruise Ship Terminal.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 27, 1998.

_____
Secretary

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SAN FRANCISCO
PORT COMMISSION

OCTOBER 27, 1998
MINUTES OF THE REGULAR MEETING

MEMBERS, PORT COMMISSION

HON. DENISE McCARTHY, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHAEL HARDEMAN
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE REGULAR MEETING
OCTOBER 27, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 4:20 p.m. Commissioners McCarthy, Brandon, Hardeman and Lee were present. Commissioner Brian McWilliams was not present.

2. APPROVAL OF MINUTES

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor. The minutes of the October 13, 1998 regular were adopted.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. The minutes of the October 15, 1998 special meeting were adopted.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor. The minutes of the October 21, 1998 special meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report:

Mr. Wong introduced and welcomed Commissioner Pius Lee to the Port Commission. Commissioner Brian McWilliams is in Asia and will be returning on November 16.

Mr. Wong reported that the Port will begin its wetlands restoration project in November and expect to complete construction by February 1999. The construction has been long awaited and the project will enhance 3 acres of existing tidal salt marsh and create 5 acres of new salt marsh habitat. Construction will include trails, wildlife viewing and picnic areas. Landscaping will follow construction and native plant restoration work to be implemented by local job training and employment organization throughout San Francisco for a period of two years. The project enhancement will be the public's access to and enjoyment of this unique natural area as well as improving wildlife habitat value. The project is funded by $1 million

grant from the City & County of San Francisco Public Utilities Commission, $500,000 grant from the California State Coastal Conservancy and capital funds from the Port. The total project estimated cost is $1,760,000. He thanked Alex Lee and his group, especially Carol Bach, who worked hard to get this project done.

Mr. Wong pointed out that listed in the Mayor's State of the City Address pamphlet, the Port in 1995 had a net income of approximately minus $500,000 and $7 million for 1997. Mr. Wong indicated that Hood & Strong reports that the Port's 1997 operating income was $8,472,000 and $8,0003,000 from negotiated settlement on behalf of the federal emergency relief money which means that the Port's total net income for 1997 was $16,475,000; not $7 million.

4. MARITIME

5. REAL ESTATE

6. FACILITIES & OPERATIONS

7. PLANNING & DEVELOPMENT

A. Approval of the J.C.Decaux and City & County of San Francisco Contract Amendment to the Automatic Public Toilet and Public Service Kiosk Agreement. (Resolution No. 98-105)

Mr. Paul Osmundson, Director of Planning and Development, indicated that the City and County of San Francisco and the Port are party to a contract with the J.C. Decaux Company to install automatic toilets and advertising public service kiosks on Port property. Three such toilets and eight kiosks have been installed on Port property pursuant to that contract. An amendment to the contract is being negotiated between the City and J.C.Decaux, requesting that additional kiosks and toilets be placed on Port property. The amended contract would provide that the ratio of kiosks to toilets for additional toilets on Port property would be 4.5 to 1. The J.C.Decaux Company sells advertising in the kiosks and uses that revenue to maintain and operate the public toilets.

Commissioner Brandon asked how many toilets would be added to the Port. Mr. Osmundson indicated that the total number of new toilets citywide is 9. Staff has identified several locations and it is likely that the Port will have one or two toilets installed on Port property.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution 98-105 was adopted.

B. Approval to enter into Exclusive Right to Negotiate for the development of the

Rincon Park Restaurant. (Resolution No. 98-106) **THIS ITEM HAS BEEN CONTINUED TO THE NEXT MEETING.**

C. Authorization to issue Request for Qualifications and Proposals for a hotel development opportunity at Broadway and The Embarcadero. (Resolution No. 98-107)

Mr. Kirk Bennett, Manager of Waterfront Development Projects, indicated that this involves the Broadway Development Site which contains approximately 2-½ acres and consists of SWL 324, 324, 322-1 as well as a 10,795 sq. ft. City parcel currently owned by the City as well as the ends of Davis and Vallejo Streets. The Port currently does not have jurisdictional control over the City parcel. The jurisdictional transfer of this parcel to the Port is currently being negotiated.

The *Waterfront Land Use Plan* identifies the seawall lots comprising the Broadway Development Site as having "high near-term revenue-generating potential for the Port, and optimizing revenue should be a strong consideration in their development." The Waterfront Plan also states that a hotel is an acceptable use for these seawall lots, which are among the few parcels on Port property for which hotels are indicated as an acceptable use.

The *Waterfront Land Use Plan* also states that, as part of the site-specific development process, an advisory group is to be established for each major project in order to provide input and guidance to the Port as it defines the development concept to be incorporated into the request for qualifications/proposals for the project. As described in the informational report presented to the Port Commission at its August 11, 1998 meeting, Port staff established the Broadway Development Site Advisory Group to provide input on the development of a hotel on the Broadway Development Site. The Advisory Group was comprised of individuals0 knowledgeable in hotel development, Port tenants located in the Northeast Waterfront and representatives of nearby neighborhoods, including Telegraph Hill, Chinatown, Golden Gateway and the Northern Waterfront business community.

The Advisory Group met five times from August 10 through September 17, 1998 and input to the Advisory Group was provided by independent design and financial consultants retained by the Port. The Advisory Group made a number of recommendations concerning planning and design issues and the recommendations were incorporated into the Project Planning and Design Objectives.

Port staff recommended that the Port solicit qualifications and proposals from qualified developers to ground lease the Broadway Development Site from the Port to develop and operate a first-class full-service hotel on the site. The respondents on the RFQ/P would need to demonstrate extensive experience in financing, developing and managing a full-service hotel of first-class quality. The respondents would need to demonstrate their ability to access equity and/or subordinate mortgage capital required to fund the development.

The development program for the site envisions a hotel of three to five stories consisting of 350 to 400 rooms, with banquet and meeting space, eating/drinking establishment(s), parking spaces as required by the San Francisco Planning Code plus surplus parking to serve visitors to the waterfront, and other amenities normally found in a full-service hotel, such as a fitness center and services for business travelers.

The Port would contract with the selected developer through a development agreement and a 66-year ground lease, the terms of which would be established during the exclusive negotiation period.

Port staff recommended a selection process consisting of the following:

1. Qualifications phase – submittal of qualifications (which would be accompanied by a $100,000 earnest money deposit that would be refundable to all respondents except the one with whom the Port enters into exclusive negotiations), which would be evaluated by Port staff with assistance from an independent financial consultant, to determine the most qualified respondents;
2. Proposal phase – submittal of proposals in response to the RFQ/P by the most qualified respondents selected by Port staff with assistance from an independent financial consultant; and
3. Exclusive Negotiations phase – selection of a developer by the Port Commission and execution of an Exclusive Right to Negotiate, which would constitute an interim contract to be utilized during the initial project approval process while the development agreement and ground lease are being negotiated and finalized and while environmental review of the project is being conducted. The exclusive negotiation period would be for 6 months with two 6-month conditional options to extend.

The selected developer would be responsible for securing all regulatory approvals for the project. While the Port would cooperate and support the environmental review and entitlement process, the responsibility and cost of obtaining these approvals would be borne by the developer. Upon completion of necessary environmental review, the Port Commission could approve a development agreement, a 66-year ground lease and related documents that would be subject to the approval of the City of San Francisco Board of Supervisors. Approvals would also be required from the City Planning Department, including approval of a conditional use authorization.

Issuance of the RFQ/P would not commit the Port Commission to approving the project. The Port would reserve its discretion as to whether to enter into a development agreement or ground lease until the environmental review process is completed in compliance with the California Environmental Quality Act. The selected developer should anticipate revisions to the proposed project concept as a result of the review process, as well as new information concerning the development site. The Port would work with the selected developer to achieve a final project that is mutually acceptable.

Port staff recommended that the hotel development on the Broadway Development Site address the objectives which are based upon: the goals, policies, objectives and development standards contained in the Port's *Waterfront Land Use Plan* and in the Design and Access Element; input from independent design and financial consultants retained by the Port and recommendations from the advisory group. The Planning Objectives are as follows:

1. Maximize the Port's rental revenue from the site in order to help the Port achieve its public trust objectives, which are to support maritime industries, provide public-oriented activities and open space improvements on the waterfront and maintain Port facilities.

2. Create a landmark development which highlights the intersection of Broadway and the Embarcadero as a gateway to Chinatown and North Beach and create an orientation point along the waterfront.

3. Create a dynamic and beautifully-designed hotel, with an inviting lobby open to the public, which is not primarily tourist-oriented, but attracts a mix of commercial groups, business travelers, leisure users, neighborhood residents and visitors to the waterfront.

4. Activate and revitalize the waterfront edge in the Northeast Waterfront area, establishing a daytime and nighttime presence in the area.

5. Unite and integrate the land side neighborhoods with the waterfront and make the area inviting to local residents as well as visitors.

6. Respect and complement the historic and architectural character of the Northeast Waterfront Historic District.

7. Provide a development program that accommodates parking for hotel guests as well as surplus parking for visitors to the waterfront. The waterfront group strongly endorses this objective but recommend that the height and mass consideration determine how much extra parking is to be included.

8. Provide meeting space in the hotel which, when not required for hotel operations, could be rented at reduced rates to community groups. This was also requested by the advisory group.

The Financial Objectives are as follows:

1. Invest substantial capital improvements in the site.

2. Guarantee a minimum monthly base rent to the Port.

3. Provide the Port with percentage rent on gross receipts (after deducting sales and

hotel taxes), no less than the following:

- 5% of gross receipts from rooms
- 2% of gross receipts on food and beverage that are part of hotel operations and 3% of gross receipts on food and beverage that are generated by subtenants.
- 10% of telephone gross receipts
- 5% of parking gross receipts
- 5% of gross receipts from other operations, including retail

The percentage rental rates would be a minimum expectation. Respondents would be encouraged to propose higher percentage rental rates. The base rent would offset percentage rent.

4. Provide the Port with guaranteed rental revenue during the construction period.

5. Provide annual adjustments in the base rent for cost of living and/or other participation in future increased revenues. Provide for adjustment of the base rent at the end of the 25th year of the term and at the end of each ten-year period thereafter.

   The actual terms of the ground lease would be negotiated by Port staff based upon the terms proposed by the respondent and would be subject to final approval by the Port Commission and the San Francisco Board of Supervisors.

The Design Objectives are as follows:

1. Meet the Port's development program and the design guidelines set forth in the Waterfront Plan's Design & Access Element, as well as pertinent policies of the City's General Plan, which address such issues as views, height, building massing, orientation, transparency, building materials, exterior elevations, articulation and character.

2. Construct buildings that are compatible with the rich architectural character of the Northeast Waterfront Historic District and complementary to the architectural features of the pier bulkhead buildings, which is strongly supported by the advisory group.

3. Express the boldness and grandeur of the Embarcadero through strong building form and details.

4. Maintain and enhance the view corridor to Pier 9 from Vallejo Street and views of the waterfront from Broadway, which was endorsed by the advisory group.

5. Use building height at or near the sidewalk edge to emphasize the corner of Broadway and the Embarcadero as a gateway to the Chinatown and North Beach

neighborhoods. Use architectural features compatible with the historic character of the area to highlight this entrance. The advisory group has specifically requested that a cupola-type feature not be utilized on this corner. Instead, create a more transparent pedestrian entrance at this corner.

6. The height limit was an issue particularly debated by the advisory group. The San Francisco Planning Code allows an 84-foot height limit on portions of the some of the parcels comprised of the Development Site but this height was opposed by some members of the advisory group. The group asked the Design and Financial consultant to study the design and financial impact of limiting the height to 65 feet. It is confirmed that the project could still be feasible with this height limitation. After the study and discussion of this matter, the majority of the advisory group recommended a not to exceed 65-foot height limit. The height limits are as follows: SWL 323 and a portion of Davis Street would have a maximum 40-foot height limit. On SWL 324, a step building height of 40 feet along the Embarcadero frontage and allow increased building height along the Broadway and Davis frontage of Seawall 324 (up to 65 feet). On Seawall Lot 322-1 and Parcel C allow a maximum height of 65 feet. A portion of Davis Street, next to the KGO building, will remain open space and must be landscaped and maintained for public use. Parcel A must remain open to retain the Vallejo view corridor.

7. Provide an open feel utilizing areas such as a courtyard, deck, atrium or terrace, and provide transparency on the ground floor of the buildings, particularly facing the Embarcadero and Broadway.

8. Provide a strong pedestrian entrance at the corner of Broadway and the Embarcadero, with service entrances and vehicle entries on Vallejo and Davis Streets.

9. Provide complementary retail uses on the ground floor along Broadway, if feasible.

10. Provide streetscape lighting, trees and other amenities.

11. Complement the area's evolving mixed-use residential and commercial neighborhoods.

Reflecting the Port's commitment to encouraging diversity in design and construction contracting, the selected developer would be expected to work with the Port to establish MBE/WBE utilization goals for subcontractor participation in design and construction of the project.

Port staff recommends that the hotel developed on the Broadway Development Site provide the amenities of a first-class full-service hotel. While the Port should not dictate the number of rooms, the number of parking spaces, the complementary uses,

or the exact square footages to be devoted to the various uses, staff recommends that proposals meet the following minimum requirements in order to be responsive:

Total Guest Rooms:	300+
Total Parking Spaces:	Three times the S.F. Planning Code requirement
Banquet & Meeting Space:	A minimum of 10,000 square feet
Features:	Public lobby and one or more eating/drinking establishments

Other amenities characteristic of a first-class full-service hotel, such as services for business travelers, a fitness center, and/or a swimming pool, should be provided but the developer should propose the composition of these amenities. Retail uses, if feasible, should be encouraged on the ground floor along Broadway. Surplus parking beyond code requirements should be included in the hotel project to serve visitors to the waterfront, although parking to support hotel operations would have priority.

Parcel C is owned by the City and County of San Francisco, and the Port is working with City staff to arrange for the transfer of jurisdictional control of Parcel C to the Port. Proposals submitted in response to this RFQ/P should presume that Parcel C would be a part of the Broadway Development Site. If for some unforeseen reason, Parcel C is not transferred to the Port's jurisdiction, the selected developer would be entitled to submit a revised project proposal for Port Commission consideration.

Parcel C is adjoined by two privately-owned land parcels (60 Broadway and 777 Davis Street) each of which contains a small office building. Respondents to the RFQ/P may desire to incorporate one or both of these privately-owned parcels into their project.

Port staff believes that the Port should not purchase these private parcels and that these private parcels should not be incorporated into the development project proposals to be evaluated. The Port's review of proposals submitted in response to this RFQ/P should be limited to proposals that cover only the property comprising the Broadway Development Site.

If respondents wish to include one or more private parcels in their hotel development, during the exclusive negotiation period, the Port could consider an alternate hotel design that includes such parcels.

If authorized, Port staff intends to proceed with the development solicitation according to the following schedule, which would be subject to change:

- Solicitation of Qualifications and Proposals: November 6, 1998
- Developer Qualification Due: January 6, 1999
- Solicitation of Proposals from "Short List": February 11, 1999
- Developer Proposals Due: April 12, 1999
- Developer Selection for Exclusive Negotiations: May 25, 1999

Mr. Paul Osmundson, Director of Planning and Development, indicated that the Telegraph Hill Dwellers and the Chinatown Community Development Center sent letters regarding their concerns about the project. The gist of the letters was that the process, with respect to the advisory group, was not appropriate and Port staff has not taken adequate care in studying the issues and recommending issuance of an RFP. Mr. Osmundson reiterated that Mr. Bennett referenced a number of statements and principles embodied in the Waterfront Plan with regard to the identification of land uses on seawall lots that were determined to be acceptable by the advisory group through the 7-year planning process. With regard to the issues related to the Design and Access Element, Port staff spent another year and a half with a technical advisory committee developing urban design guidelines for all Port properties including these sites. Those were the basis of the consultant work and the work that the advisory group undertook. The fundamental approach that the Port undertook in the development of the *Waterfront Plan* had to do with establishing the 27-member advisory board and ensuring that every constituency has input into the formation of the *Waterfront Plan* that sets the course for how the Commission is going to balance all of the competing objectives that the Commission has to entertain in making decisions related to land use, economics, development, public access, etc. The issues of how this site fits into the overall framework for the Port are important. It is also important to remember that in the Waterfront Plan, approved by the Port Commission, the Planning Commission, Board of Supervisors and the Mayor, the Port Commission identified this site as a major commercial development site that would generate revenues to support other public trusts mandated objectives that are embodied in the Burton Act that guides the Port's activities. With respect to the questions of whether the advisory group was constituted appropriately and followed the Waterfront Plan, Port staff believes that the Broadway advisory group was constituted pursuant to the Waterfront Plan. Staff believes that the community was given an opportunity to participate not only in the 7-years of planning but also in the formation of the advisory group. Mr. Bennett has done an excellent job in explaining how the advisory's group has been reflected in the development objectives that would be incorporated into the RFP. He pointed out that this is but the beginning of the process. Staff will issue the RFP, receive responses, evaluate them and the Commission will be asked to consider entering negotiations with the developer. If the Commission chooses, staff would enter into the negotiations and require the developer to obtain CEQA clearance, a conditional use permit from the Planning Commission and go through the Waterfront Advisory Committee and Board of Supervisors for approval of the lease.

Joe Luttrell, Telegraph Hill Dwellers, indicated that he was a member of the advisory group representing the Telegraph Hill Dwellers. He indicated that very few people know about this project and he was concerned about public input on the project and when it will occur. He suggested that public input should occur now to have a better chance of consensus and resolution.. The advisory group had very little chance to provide any significant input into the project. They were told about the hotel development and most of the decisions have already been taken. The Telegraph Hill

Dwellers were also concerned about the use, the height, massing and bulk of the use. A hotel is a permitted use but there are other permitted uses at the site. There has been some reduction proposed from 84 to 65 feet. The impact of the bulk and the mass is going to be a big change. There has really been no opportunity apart from one suggestion to reduce the height from 84 to 65 feet. He proposed that a group be formed to reflect the interest of the community and be given the chance to provide input that is broader than the group that was formed. San Francisco Tomorrow was not included in the group. No effort was made to talk to the community. If the Commission proceeds today and approves the request, the Commission would have taken the decision away from any public input.

Janet Morcom, resident and representative of the Golden Gateway Commons III, concurred with Mr. Luttrell's comments. The Golden Gateway Commons knew nothing about the project and some of the residents attended today's meeting to find out about the Port's plans and what the residents can do to influence and change the Port's plan to put a large hotel in the area where residential and commercial offices are located. Ms. Morcom indicated that they are unhappy with the Port's plan and they would like to have input and be consulted, as they believe there are other uses appropriate for the space.

Jasmine Kaw, representative of the Chinatown Community Development Center, indicated that they were asked to sit on the advisory committee because they believe they had been closely involved with the waterfront project. Chinatown was very concerned about the connections from the waterfront to the northeast quadrant. They had been in discussions with the Port staff and other City staff about better connections from the waterfront to Chinatown. They had looked at the Broadway corridor as a gateway, not as a physical gateway but a gateway that would visually connect, provide an orientation, destination point that would draw people up along Broadway given what has happened on the Embarcadero. They see this as a corridor that could become a wonderful corridor connection from the northeast quadrant to the waterfront. They came to this advisory group with a premise. They accepted the premise that the Port was considering a hotel development. They did not know at the time what type of a hotel development it was going to be. They accepted the fact that it would become a product that would yield revenue to the Port. Once the process started, they felt that this was not a process that gave them a chance to debate, discuss, identify issues that are relevant. Although they have accepted this as a hotel development, they expected to discuss whether this is going to be a full-service hotel, a boutique, or a small type of a hotel but were never discussed. A 300-room hotel was a dictate by the Port and they were asked to accept that. Once that was given, it was very hard to discuss the design, height issues and bulk. If they are to continue with this process, she suggested looking at how this development is going to fully address the concerns of the neighborhood. She pointed out a couple of the design and planning objectives. She specifically addressed Planning Objective #2 and Design Objective #5. Those two objectives were given or presented to them at the committee. Looking at the objectives, Chinatown CDC would have to disagree with those objectives in terms of what the gateway means. They don't necessarily believe that a

building defines a gateway. There are many other ways in which this particular intersection could become a gateway as they envision it. A place of destination.itself could become a gateway and it does not have to be a strong building structure. Issues such as these were never fully discussed. Even the ground floor retail, which they believe would enhance this corridor, is feasible. They believe that a ground floor retail element should be a required component for the developer.

Commissioner Lee inquired about the minimum monthly base rent for this development. Mr. Bennett replied that the anticipated annual rent, percentage wise, would be $2 million. As part of the proposal, staff would be asking the proposers to indicate how much of that amount they are going to guarantee.

Commissioner McCarthy commented that she served on the Waterfront Plan committee. There were a lot of discussions on land use along the waterfront. This site was considered and has been considered for a number of years for a hotel development. There were numerous articles in the newspapers mentioning this site as a hotel development that the Port intends to do. She understood the speakers' concerns but at the same time, it has been a given. The committee was formed and discussed as much as possible that given and what they were going to end up with. The revenue that will be realized from the hotel is necessary for the Port to do things that meet the public trusts. Hotels are a public trust use because they are open to the public. Commissioner McCarthy gave assurance that once the developers come in, there will be public presentations. However, there is not a way to have a lot of public input into the selection process, that information has to be kept confidential. The public would be able to look at the different proposals and the mass, the architecture, and the uses and offer public input. Beyond that, it is kept confidential and the Commission has to make its decision. She thanked the speakers for serving on the committee and she hoped that they would continue to serve on the committee.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution 98-107 was adopted.

D. Resolution approving the selection of Pier 30-32 as a preferred location for the development of the new James R. Herman Cruise Ship Terminal. (Resolution No. 98-108)

Ms. Anne Cook, Manager, Waterfront Development Project, indicated that San Francisco needs a new cruise terminal. The current cruise terminal is inadequate for continuation of cruise ship businesses. Of particular concerns are: the narrow width and aprons, limited occupancy, high operating costs, lack of passenger parking, unsightliness, minimal bus and taxi waiting areas and chaotic internal and external circulation. Because of these factors Port staff prepared a draft background report on the advantages and disadvantages of Pier 35, Pier 27-29 and Pier 30-32 as potential sites for a modern cruise terminal and presented the findings in a public presentation to the Port Commission on September 8th. In the presentations, staff

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SAN FRANCISCO
PORT COMMISSION

SPECIAL MEETING – PLEASE NOTE THE DATE/TIME OF THE MEETING
→→→9:00 A.M., FRIDAY, NOVEMBER 6, 1998←←←
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

AGENDA

1. **ROLL CALL**

2. **NEW BUSINESS/PUBLIC COMMENT**

   Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

3. **EXECUTIVE SESSION**

   A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

   B. CLOSED SESSION

      (1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

      a. Property: Ferry Building
      Person Negotiating:
      Port of San Francisco: Paul Osmundson, Director of Planning & Development

      An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

4. **RECONVENE IN OPEN SESSION**

   A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

5. ADJOURNMENT

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100. The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142. There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building. Assistive listening devices are available for use in the Port Commission Meeting. The following services are available on request 72 hours prior to the meeting: (1) American Sign Language Interpreters; (2) A Sound Enhancement System; (3) The use of a reader during the meeting and (4) copies of the agenda or minutes of the meeting in alternative formats. Please contact Kevin Jensen, the Port's ADA Coordinator at (415) 274-0555. Late requests will be honored if possible. Please contact the Commission Secretary at (415) 274-0406 should you require large print of the agenda.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-4851.

San Francisco Lobbyist Ordinance

Attention: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Admin. Code 16.520 – 16.534) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #701, San Francisco, CA 94102, phone (415) 554-9510 or fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/.

SAN FRANCISCO
PORT COMMISSION

NOVEMBER 6, 1998
MINUTES OF THE SPECIAL MEETING

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MEMBERS, PORT COMMISSION

HON. DENISE McCARTHY, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
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HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
NOVEMBER 6, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 9:05 a.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon, Michael Hardeman and Pius Lee. Commissioner McWilliams was not present.

2. NEW BUSINESS/PUBLIC COMMENT

3. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 9:06 a.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

At 12:15 p.m., Commissioners McCarthy, Brandon, Hardeman and Lee returned from executive session and convened in public session.

ACTION: Commissioner Brandon moved approval not to disclose any information discussed in executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 12:16 p.m.

SAN FRANCISCO
PORT COMMISSION

SPECIAL MEETING – PLEASE NOTE THE TIME OF THE MEETING
→→→3:00 P.M., TUESDAY, NOVEMBER 10, 1998←←←
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

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AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - October 27, 1998 Special Meeting
   - October 27, 1998 Regular Meeting

3. **EXECUTIVE**

   A. Executive Director's Report

4. **MARITIME**

   A. Approval of Five-Year Non-Exclusive Terminal Management Agreement with Metropolitan Stevedore Company for Pier 35. (Resolution No. 98-110)

5. **REAL ESTATE**

   A. Approval of two leases for surface parking between the Port and San Francisco Parking, Inc. at SWL 322-I located at Front and Broadway Streets (Parcel 1); Richard Stein, d.b.a. City Parking Company at Seawall Lot 330 located at the Embarcadero and Bryant Streets (Parcel 3). (Resolution No. 98-112)

   B. Informational Presentation: Negotiation of Memorandum of Understanding between the Port and the Pan Pacific Expo Group for Expo 2002.

6. **FACILITIES & OPERATIONS**

   A. Approval to re-advertise for competitive bids for Contract No. 2617, "Pier 47A Reconstruction." (Resolution No. 98-109)

7. **PLANNING & DEVELOPMENT**

   A. Approval to enter into Exclusive Right to Negotiate for the development of the Rincon Park Restaurant. (Resolution No. 98-106)

8. FINANCE & ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of month-to-month lease with American Red Cross at Pier 27. (Resolution No. 98-111)

10. NEW BUSINESS / PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

11. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

b. Property: Pier 27/29 development opportunities
Person Negotiating:
Port of San Francisco: Larry Florin, Director, Special Projects

An executive session has been calendared to discuss development opportunities at Pier 27/29

c. Property: Seawall Lot 313 located at Northpoint and the Embarcadero
Person Negotiating:
Port of San Francisco: Kirk Bennett, Manager, Waterfront Development Projects

An executive session has been calendared to discuss Port property located at Seawall Lot 313.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION MATTER:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one cases).

12. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

13. ADJOURNMENT

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100. The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142. There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building. Assistive listening devices are available for use in the Port Commission Meeting. The following services are available on request 72 hours prior to the meeting: (1) American Sign Language Interpreters; (2) A Sound Enhancement System; (3) The use of a reader during the meeting and (4) copies of the agenda or minutes of the meeting in alternative formats. Please contact Kevin Jensen, the Port's ADA Coordinator at (415) 274-0555. Late requests will be honored if possible. Please contact the Commission Secretary at (415) 274-0406 should you require large print of the agenda.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-4851.

San Francisco Lobbyist Ordinance

Attention: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Admin. Code 16.520 - 16.534) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #701, San Francisco, CA 94102, phone (415) 554-9510 or fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/.

PORT OF SAN FRANCISCO

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MEMORANDUM

November 10,1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Five-Year Non-Exclusive Management Agreement with Metropolitan Stevedore Company at Pier 35.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION FOR THE NON-EXCLUSIVE MANAGEMENT AGREEMENT WITH METROPOLITAN STEVEDORE COMPANY FOR PIER 35

BACKGROUND

Pier 35 serves as the Port's cruise terminal. Metropolitan Stevedore Company ("Metro") has been serving as the terminal operator of this facility under two license agreements that date back to when Metro acquired California Stevedore and Ballast ("CS&B") in 1990. The first License, entered into between the Port and CS&B in 1979 is an agreement where CS&B paid rent to the Port to conduct Marine terminal operations at Pier 35. This license describes the office space, waiting rooms, corridors, gear storage and cargo spaces. On 3/12/85 a second license was executed with CS&B that added floor space at the entrance of the Pier. These two licenses simply describe the rental of space under conditions the Port required at the time of execution of these licenses. They did not address any particulars pertaining to cruise terminal operations. Secondary use of the facility was not addressed in these licenses nor did they describe any promotion or marketing of the terminal to the cruise industry.

Metro bought CS&B in 1990 and since then has operated the terminal under the Metro name. Metropolitan Stevedore Company is a contract stevedore company with operations in seven locations on the West Coast. They currently operate cruise operations in the Port of Los Angeles and San Diego.

THIS PRINT COVERS CALENDAR ITEM NO. **4A**

The Port and Metro have formulated a new management agreement that will solidify the management of Pier 35 for maritime use under the previous licenses but also addresses operational and marketing issues, such as scheduling vessel calls, shared maintenance of the facility, federally mandated security requirements, promotion and marketing of the terminal to the cruise ship industry and secondary uses of the facility. This proposed agreement creates a partnership between the Port and Metro to operate the facility whereby Metro will provide maritime terminal operations and special event coordination. Key issues for formalizing this agreement are the needed compliance of regulations imposed on cruise terminals by the Department of Transportation's mandated Federal Passenger Terminal Security Act as well as the higher expectations of cruise line operators for terminal amenities.

Metro shall also manage special events at the terminal. All special event inquiries for that facility will be directed to Metro for them to determine appropriateness and scheduling. Metro will advise secondary users on all requisite permits and regulations. No special event shall ever interfere with the operation of the Facility as the cruise terminal.

The Cruise ship industry has become one of the core portions of our maritime business portfolio. In order to meet the rising demands of this industry, the Port has realized that a partnership with our terminal operator is fundamental in generating the kind of service necessary to maintain and grow this business. Therefore negotiations this past year have directly addressed the need for an agreement that would provide an alliance in building the cruise ship business in San Francisco.

Proposed Management Agreement

1. **Premises**:
   Approximately 242,149 sq. ft. as shown on the attached exhibit A- 1 & 2 Those portions of the passenger terminal and appurtenances thereto located at the premises commonly referred to as Pier 35. It does not include those areas of Pier 35 structure leased or available to be leased to tenants, other than Metro, by the Port.

2. **Term**:
   This agreement shall run for five years from the commencement date of December 1,1998 through January 1, 2003.

3. **Financial Terms**:
   Metro shall pay to the Port an annual use fee for the facility of $76,000.00 payable in 12 equal monthly installments of $6,333.33.

Metro shall establish a fee schedule for secondary uses of the facility. Fees collected from secondary uses of the facility shall be shared equally with the Port. Payment of which shall be due to the Port thirty (30) days after completion of the secondary event.

Metro may grant financial credits and incentives to attract new users to the facility or to retain existing users. The Port may compensate Metro for these credits and incentives through use fee credits.

4. **Termination**: This agreement may be terminated by either party with 180 days notice without penalty, if the Port's primary site of cruise ship operations is moved from the Facility to another site.

Port staff recommends approval of the non-exclusive management agreement with Metropolitan Stevedore Company for Pier 35.

Prepared by: John Davey
Maritime Operations Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-110

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, under Charter Section B 3.581 (g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, The Port holds in trust and subject to its lawful disposition certain maritime facilities located at the Passenger Terminal at Pier 35 situated in the City and County of San Francisco; and

WHEREAS, The Port desires to improve the efficiency and operations of such facilities and induce increased passenger business through the marine terminal facility located thereon; and

WHEREAS, The continuity of terminal services will enhance passenger operations at the Port; and

WHEREAS, The Port desires to assign the responsibility of management and the provision of terminal operating services, both current and prospective, for the maritime facilities located at Pier 35 to Metropolitan Stevedore Company; and

WHEREAS, The Port desires to contract with Metropolitan Stevedore Company to serve as the terminal operator and manger of such facilities, and Metropolitan Stevedore Company desires to contract with the Port to perform such services; now therefore, be it

RESOLVED, that the San Francisco Port Commission, hereby approves a Non-Exclusive Management Agreement as described in the Memorandum for Agenda Item 4A for the November 10, 1998 Port Commission meeting and hereby authorizes the Executive Director of the Port to execute the same on behalf of the Port.

I hereby certify that the Port Commission at its meeting of November 10, 1998 adopted the foregoing resolution.

_____
Secretary

I:\metro package.doc

PORT OF SAN FRANCISCO

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MEMORANDUM

November 4, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian Thomas McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of two leases for surface parking between the Port and San Francisco Parking, Inc. at Seawall Lot 322I located at Front and Broadway Streets ("Parcel 1"); and Richard Stein, d.b.a. City Parking Company at Seawall Lot 330, located at Embarcadero and Bryant Streets ("Parcel 3").

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

BACKGROUND

On April 28, 1998 the Port Commission approved Resolution No. 98-73, authorizing Port staff to offer through competitive bidding two parcels located in the Northeastern Waterfront and one parcel located in the Central Waterfront, for operation of surface public parking lots. The process was to culminate in three separate leases, each with a term of two years. The successful bidder(s) would be those which proposed the highest rent for each parcel and who met the minimum qualifications for experience and financial standing.

On July 29, 1998, Port staff issued an invitation for bids. A major goal of the Port Commission was to encourage the participation of minority-owned and economically disadvantaged businesses. Staff consulted with the Human Rights Commission and the City Attorney's Office to determine appropriate methods for encouraging participation in the bid process by small, local, women, economically disadvantaged and minority owned businesses. The Port advertised extensively in a wide variety of publications intended to reach MBE/WBEs. This program was highly successful as the Port received requests for 42 bid packages and eventually received bids from 18 parking lot operators, 56% of which were MBE/WBEs.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

On August 26,1998 a pre-bid conference was held, which included a site tour of the parking facilities. The due date for submittal of bids was September 15, 1998, at which time the bids were opened and ranked in order of highest bid. Copies of the bid results were sent to the Port Commission for review. The high bidders for the three parcels are listed below:

Parcel 1. (Seawall Lot 322-I) San Francisco Parking, Inc.	$39,217.00
Parcel 2. (Seawall Lots 321, 323 and 324) Allright Cal, Inc.	$67,198.00
Parcel 3. (Seawall Lot 330) Richard Stein, d.b.a. City Parking Company	$47,096.00

Port staff has completed negotiations for two of the leases, and is prepared to request approval by the Port Commission of leases for Seawall Lot 322-I (Parcel 1) with San Francisco Parking, Inc. and Seawall Lot 330 (Parcel 3) with Richard Stein, d.b.a. City Parking Company. The proposed lease terms and conditions are discussed below:

LEASE TERMS AND CONDITIONS

Seawall Lot 322-I (Parcel 1)

(1) Tenant: San Francisco Parking, Inc. (Lease #L-12663)
(2) Premises: Approximately 37,812 square feet of Seawall 322I
(3) Term: Two (2) years
(4) Monthly Rent: $39,217.00 per month with annual CPI adjustment.
(5) Hotel Development Site. Tenant acknowledges that the planning and pre-construction phases of such a project, and the activities associated with the project may require the Port and/or developer to enter the site to conduct pre-development inspections and surveys. Said activities may include, but are not limited to, geotechnical studies, utility surveys, soils testing, seismic evaluation and miscellaneous site data collection. Port shall give Tenant five (5) days prior written notice of Ports intent to enter Premises for conducting of said surveys or studies.

Seawall Lot 330 (Parcel 3)

(1) Tenant: Richard Stein, d.b.a. City Parking Company. (Lease #L-12665)
(2) Premises: Approximately 124,065 square feet of Seawall Lot 330; with option by Port to expand if space south of the Ferry Building becomes available for surface parking operations. For expansion site operations, Tenant shall pay to the Port percentage rent equal to 66% of gross receipts, after parking tax.
(3) Term: Two (2) years.
(4) Monthly Rent: $47,096.00 per month with annual CPI adjustment.

(5) ESPN X-GAMES: Tenant acknowledges that the Port has made a commitment to the ESPN X-Games to provide up to 50,000 square feet of space at Seawall Lot 330 for production vehicle staging during the event. The ESPN X-Games are scheduled for June 1, 1999 to July 3, 1999, and June 1, 2000 to July 3, 2000. The Tenant will be entitled to a rent credit in direct proportion to the square footage reduction of the Premises as a result of the ESPN X-Games' temporary use of a portion of the Premises.

Both Leases include the following additional provisions.

In addition to Worker's Compensation, Comprehensive General Liability and Comprehensive Automobile Insurance, the Tenant must also carry Garage Liability and Garage Keeper's Insurance with a limit of not less than one million dollars ($1,000,000).

Tenant is required to pay highest general prevailing wages in accordance with prevailing wage rates adopted by the San Francisco Board of Supervisors pursuant to Section 6.37 of the San Francisco Administrative Code.

Additionally, since both of the parcels are designated as future development sites, the Port shall retain the right to recapture either parcel upon sixty (60) days written notice to the operator.

Increase Revenue Analysis

LOCATION	CURRENT BASE RENT	NEW BASE RENT	% INCREASE
SWL 322-1 - (PARCEL 1)	$ 25,907.00	$ 39,217.00	51.38 %
SWL 330 - (PARCEL 3)	$ 25,000.00	$ 47,096.00	88.38 %

Total Annual Base Rent from the two leases will be $1,035,756.00.

Board of Supervisors Approval of Leases

Under Charter Sections 2.110 and 9.118, leases having anticipated revenue to the City of one million dollars or more are subject to approval by the Board of Supervisors. The lease with Richard Stein, d.b.a. City Parking Company for Seawall Lot 330 (Parcel 3) will require approval from the Board of Supervisors because the lease will generate over one million dollars during the term.

RECOMMENDATIONS

Staff recommends that the Commission approve the attached resolution authorizing the Executive Director of the Port to enter into two leases, each with two-year terms, for public parking lots with San Francisco Parking, Inc. (Lease #L-12663) at Seawall Lot 322-I (Parcel 1); and Richard Stein, d.b.a. City Parking Company (Lease #L-12665) at Seawall Lot 330 (Parcel 3).

Prepared by: Mark W. Lozovoy, Senior Property Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-112

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

WHEREAS, Surface parking generates a significant revenue stream to the Port and the Port desires to operate its parking lots in an efficient manner while maximizing revenues; and

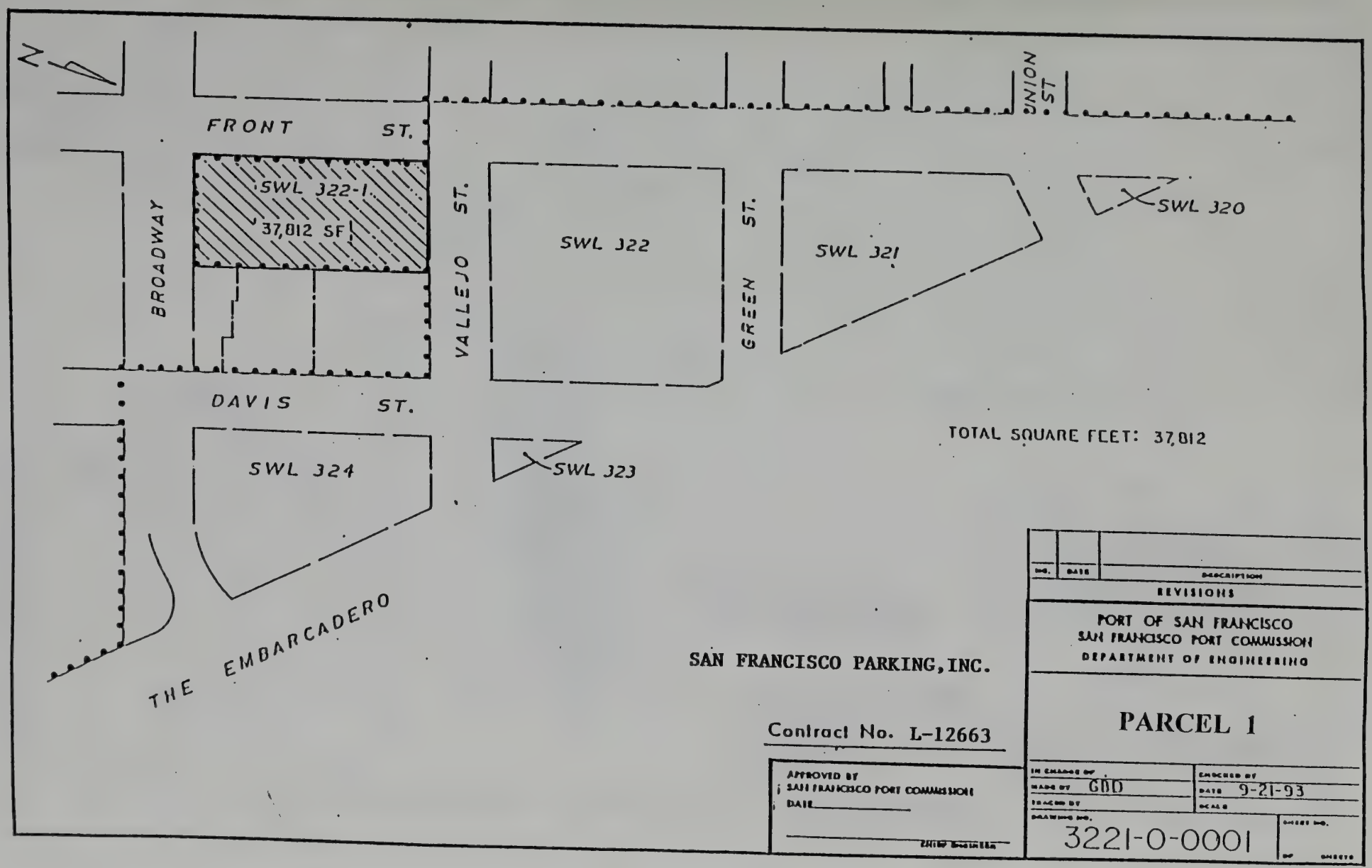
WHEREAS, Seawall Lots 322I ("Parcel 1"), and Seawall Lot 330 ("Parcel 3") are located where demand for parking by both Port tenants and the public is strong; and

WHEREAS, the San Francisco Port Commission authorized Port staff to offer through competitive bidding two leases, each with two-year terms, for surface parking lot operations available to the public, located on Seawall Lot 3221 (Parcel 1), and Seawall Lot 330 (Parcel 3); now, therefore, be it

RESOLVED, that the San Francisco Port Commission hereby approves Lease No. L-12663 with San Francisco Parking, Inc., and Lease No. L-12665 with Richard Stein, d.b.a. City Parking Company on terms and conditions outlined in the memorandum to the Port Commission for Agenda Item 5A of the Port Commission Meeting on November 10, 1998, and the Port Commission authorizes the Executive Director of the Port, or his designee, to execute the same on behalf of the Port in such form as is approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 10, 1998.

_____
Secretary



TOTAL SQUARE FEET: 37,812

SAN FRANCISCO PARKING, INC.

Contract No. L-12663

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE

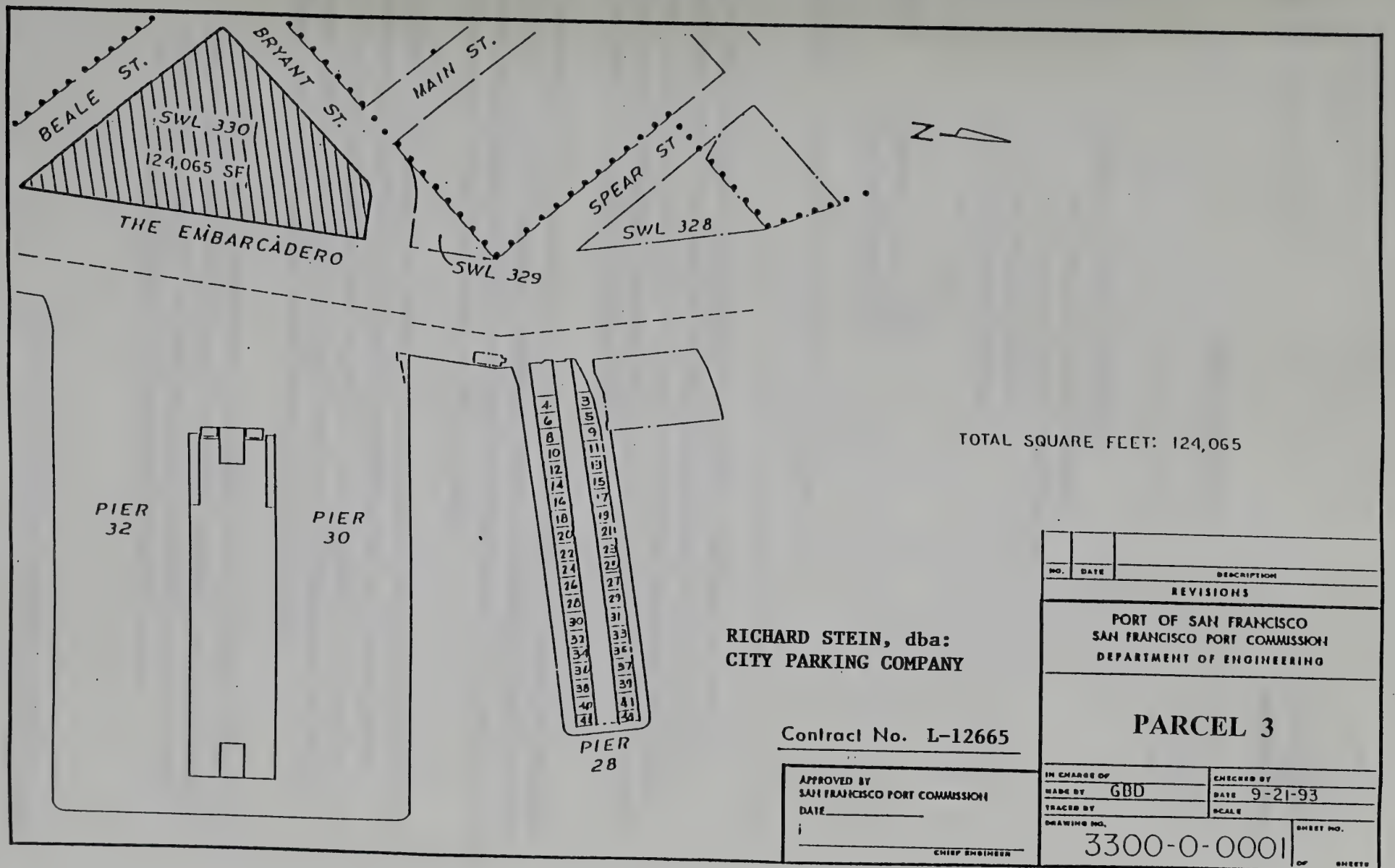
NO.	DATE	DESCRIPTION

REVISIONS

PORT OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
DEPARTMENT OF ENGINEERING

PARCEL 1

IN CHARGE OF	CHECKED BY
MADE BY GDD	DATE 9-21-93
TRACED BY	SCALE
DRAWING NO. 3221-0-0001	SHEET NO. OF SHEETS



TOTAL SQUARE FEET: 124,065

RICHARD STEIN, dba:
CITY PARKING COMPANY

Contract No. L-12665

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

_____
CHIEF ENGINEER

NO.	DATE	DESCRIPTION

REVISIONS

PORT OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
DEPARTMENT OF ENGINEERING

PARCEL 3

IN CHARGE OF	CHECKED BY
MADE BY GBD	DATE 9-21-93
TRACED BY	SCALE
DRAWING NO. 3300-0-0001	SHEET NO. OF SHEETS

PORT OF SAN FRANCISCO

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MEMORANDUM

November 6, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Informational Presentation on Pan Pacific Expo

At the Port Commission meeting of October 27, 1998 a presentation was made by an organization called the Bay Area Pan Pacific Exposition Group, Inc (PPE). The PPE is a group of local business leaders that was formed to develop and promote an International Exposition in San Francisco. The goal of the group is to mount an international exposition on San Francisco's waterfront in the year 2002.

At the hearing the PPE presented its initial analysis on the viability of holding an exposition on Piers 27-35. The PPE presented a preliminary transportation analysis, feasibility analysis and explained that strong interest had been expressed for the concept of an exposition by both large international corporations, as well as foreign countries.

Subsequent to the meeting, at the direction of the Commission, Port staff held meetings with representatives of the PPE to try and identify issues that needed to be resolved before proceeding to an agreement for use of the property. A meeting was held between Port staff and representatives of the PPE on Thursday November 5th. At this meeting the following agreements and conclusions were reached between the PPE and the Port:

1. A team consisting of representatives of all of the relevant Port divisions (Executive, Real Estate, Planning and Engineering) would be convened to conduct an intensive series of discussions with the Exposition Group. These discussions would begin immediately and would hope to be completed by the end of December.

THIS PRINT COVERS CALENDAR ITEM NO. **5B**

2. The Port would report back to the Commission at the first meeting in January on the findings and the results of these discussions. If these discussions have proceeded to an appropriate point then we would also use this meeting to present a proposed Memorandum of Understanding (MOU) between the PPE and the Port. Such an MOU would clearly delineate performance standards that would have to be met prior to advancing to the next stage in the project.

3. The PPE and the Port staff will not limit their discussions to the site presented by the PPE representatives at the Port Commission meeting of October 27, 1998. The analysis will look at alternative sites that may be more suitable for the type of exposition being proposed by the PPE.

Staff will keep the Commission apprised as to the status of the discussions between the PPE and Port staff at subsequent Commission meetings.

Prepared by: Larry Florin
Director, Special Projects

PORT OF SAN FRANCISCO

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MEMORANDUM

November 4, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Permission to re-advertise for Competitive Bids for the Pier 47A Reconstruction Project, Contract No. 2617

DIRECTOR'S RECOMMENDATION: TO APPROVE THE REQUEST FOR PERMISSION TO RE-ADVERTISE FOR COMPETITIVE BIDS FOR THE PIER 47A RECONSTRUCTION PROJECT

The "Pier 47A Reconstruction Project" as re-advertised consists of the reconstruction of the pier to a slightly smaller area that allows for public access and fishing industry use.

On May 21, 1998, the Port received bids for Contract No. 2617, "Pier 47A Reconstruction Project." Seven contractors submitted bids. A copy of the bid results is attached. The bids ranged from $977,825 to $1,668,100, all in excess of the available funding. On June 17, 1998, the Port Commission authorized the rejection of all bids for Contract No. 2617, "Pier 47A Reconstruction Project" due to insufficient funding to accept any bids.

On August 25, 1998, the Port Commission approved the 1998/99 Capital Plan which added $498,000 to the Pier 47A budget. In September of this year, Port Maintenance demolished the existing Pier 47A, eliminating a hazardous facility and reducing the scope and cost of this work. A summary of the funding, current expenditures and available construction budget follows:

THIS PRINT COVERS CALENDAR ITEM NO. **6A**

Existing funding and source:

TEA	$530,000.00
Port	$400,000.00
Added Port Capital	$498,000.00
Subtotal	$1,428,000.00

Funds spent or committed for the project:

AGS Soils Report:	$56,139.00	
Architectural Services (BOA*):	$39,622.00	
AGS, Indicator Pile Program:	$22,000.00	(estimated)
	$117,621.00	

*(BOA is Bureau of Architecture, Department of Public Works, City and County of San Francisco)

Remaining Funding:

Existing funding subtotal	$1,428,000.00
Expended or committed to date	-$117,621.00
Remaining funding	$1,310,379.00

It has been standard practice for staff to apply a 10% contingency for construction contracts. Applying this 10% contingency to the low bid previously received indicates that the amount of funding now available for this project will be sufficient.

Staff recommends that the Commission authorize re-advertisement of Contract No. 2617.

Prepared by: Cliff Jarrard, Chief Harbor Engineer

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-109

WHEREAS, on May 21, 1998, seven bids were received for Contract No. 2617, "Pier 47A Reconstruction Project"; and

WHEREAS, on June 17, 1998, the Port Commission authorized the rejection of all bids for Contract No. 2617, "Pier 47A Reconstruction Project" due to insufficient funding to accept the lowest bid; and

WHEREAS, on August 25, 1998, the Port Commission approved the 1998/99 Capital Plan which added $498,000 to the Pier 47A budget; and

WHEREAS, in September of this year, Port Maintenance demolished the existing Pier 47A, eliminating a hazardous facility and reducing the scope and cost of this work; and

WHEREAS, the amount of funding now available for this project will be sufficient; and now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes the re-advertisement of Contract No. 2617, "Pier 47A Reconstruction Project."

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 10, 1998.

_____
Secretary

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BID SUMMARY
PORT OF SAN FRANCISCO

Prepared By: Victor Yew
Checked By:
Date: May 21, 1998

Project: Pier 47A Reconstruction Project
Contract No.: 2617

Project Engineer: Victor Yew

Bids Opened: Thursday, May 21, 1998, 2 P.M.

Bid Item #	Description	Estimated Quantity	Lucus Marine Construction Inc. PO BOX 679 W. Sacramento, CA 95691-0679 (916) 372-5794 Unit /LS Price	Total	Vortex Diving Inc. 2900 Main St., Building 65 Alemeda, CA 94501 (510) 865-8666 Unit /LS Price	Total	Power Engineering Contractors Inc 1500 Ferry Point PO BOX 545 Alameda, CA 94501 (510) 337-3800 Unit /LS Price	Total	Valentine Corportation PO BOX 9337 San Rafael, CA 94912 (415) 453-3732 Unit /LS Price	Total
1	Mobilization	Lump Sum	$ 45,000.00	$ 45,000.00	$ 50,000.00	$ 50,000.00	$ 55,000.00	$ 55,000.00	$ 60,000.00	$ 60,000.00
2	Demolition	Lump Sum	$120,000.00	$ 120,000.00	$125,000.00	$ 125,000.00	$111,710.00	$ 111,710.00	$153,669.00	$ 153,669.00
3	Pier Superstructure Steel Framing	Lump Sum	$110,000.00	$ 110,000.00	$100,000.00	$ 100,000.00	$187,497.00	$ 187,497.00	$ 62,000.00	$ 62,000.00
4	Pier Wood Deck, Railing and Bullrail	Lump Sum	$189,617.00	$ 189,617.00	$230,000.00	$ 230,000.00	$250,000.00	$ 250,000.00	$230,000.00	$ 230,000.00
5	View Deck Stair, Ramp, Decking, and	Lump Sum	$ 26,000.00	$ 26,000.00	$ 50,000.00	$ 50,000.00	$ 20,000.00	$ 20,000.00	$ 30,000.00	$ 30,000.00
6	Electrical Work	Lump Sum	$ 20,000.00	$ 20,000.00	$ 35,000.00	$ 35,000.00	$ 39,000.00	$ 39,000.00	$ 75,000.00	$ 75,000.00
7	Plumbing Work	Lump Sum	$ 20,000.00	$ 20,000.00	$ 12,000.00	$ 12,000.00	$ 5,400.00	$ 5,400.00	$ 15,000.00	$ 15,000.00
1	Furnish and Drive Indicator Piles, EACH	8	$ 8,000.00	$ 64,000.00	$ 4,000.00	$ 32,000.00	$ 6,200.00	$ 49,600.00	$ 6,000.00	$ 48,000.00
2	Extract Pile and Redrive, EACH	2	$ 8,000.00	$ 16,000.00	$ 2,500.00	$ 5,000.00	$ 2,900.00	$ 5,800.00	$ 6,000.00	$ 12,000.00
3	Furnish and Drive Pile Extensions, EACH	3	$ 7,500.00	$ 22,500.00	$ 2,000.00	$ 6,000.00	$ 5,200.00	$ 15,600.00	$ 6,000.00	$ 18,000.00
4	Furnish 36 Foot Long Plastic Covered 8" Standard Weight Steel Pipe Pile Portion of Bearing and Batter Piles, EACH	64	$ 1,600.00	$ 102,400.00	$ 1,900.00	$ 121,600.00	$ 2,200.00	$ 140,800.00	$ 2,000.00	$ 128,000.00
5	Furnish 8" Dia. Standard Weight Steel Pipe Pile Portion of Bearing and Batter Piles, LINEAL FOOT	2300	$ 14.00	$ 32,200.00	$ 12.00	$ 27,600.00	$ 10.00	$ 23,000.00	$ 11.00	$ 25,300.00
6	Field Fabricate, Drive and Cut-off Bearing Piles, LINEAL FOOT	2400	$ 8.00	$ 19,200.00	$ 16.00	$ 38,400.00	$ 16.00	$ 38,400.00	$ 25.00	$ 60,000.00
7	Field Fabricate, Drive and Cut-off Batter Piles, LINEAL FOOT	2500	$ 16.00	$ 40,000.00	$ 18.00	$ 45,000.00	$ 15.00	$ 37,500.00	$ 30.00	$ 75,000.00
8	Furnish Fender Piles, EACH	36	$ 1,800.00	$ 64,800.00	$ 2,200.00	$ 79,200.00	$ 3,500.00	$ 126,000.00	$ 3,000.00	$ 108,000.00
9	Drive and Cut-off Fender Piles, EACH	36	$ 300.00	$ 10,800.00	$ 850.00	$ 30,600.00	$ 400.00	$ 14,400.00	$ 2,000.00	$ 72,000.00
10	Furnish and Install Light Poles and Fixtures, EACH	13	$ 3,000.00	$ 39,000.00	$ 3,000.00	$ 39,000.00	$ 1,800.00	$ 23,400.00	$ 3,000.00	$ 39,000.00
11	Furnish and Install Benches, EACH	4	$ 1,800.00	$ 7,200.00	$ 500.00	$ 2,000.00	$ 1,500.00	$ 6,000.00	$ 1,700.00	$ 6,800.00
12	Furnish and Install Ladders, EACH	6	$ 1,400.00	$ 8,400.00	$ 500.00	$ 3,000.00	$ 800.00	$ 4,800.00	$ 1,200.00	$ 7,200.00
13	Install Cleats, EACH	14	$ 300.00	$ 4,200.00	$ 300.00	$ 4,200.00	$ 200.00	$ 2,800.00	$ 500.00	$ 7,000.00
14	Install Bollards, EACH	2	$ 1,054.00	$ 2,108.00	$ 1,000.00	$ 2,000.00	$ 1,000.00	$ 2,000.00	$ 500.00	$ 1,000.00
15	Concrete for Piling, CY	48	$ 300.00	$ 14,400.00	$ 400.00	$ 19,200.00	$ 200.00	$ 9,600.00	$ 300.00	$ 14,400.00
	Totals			$ 977,825.00		$1,056,800.00		$ 1,168,307.00		$ 1,247,369.00

Distribution C Jarrard E Byrne, R Lan Bid Summary Binder, Contract File No. 2617

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BID SUMMARY
PORT OF SAN FRANCISCO

Project: Pier 47A Reconstruction Project
Contract No.: 2617
Project Engineer: Victor Yew
Bids Opened: Thursday, May 21, 1998, 2 P.M.

Bid Item #	Description	Estimated Quantity	Ranger Pipelines Inc. 1296 Armstrong Ave. PO BOX 24109 San Francisco, CA 94124 (415)822-3700 Unit /LS Price	Ranger Total	Agbayani Inc 2623 - 18th Avenue San Francisco, CA 94116 (415) 221-2065 Unit /LS Price	Agbayani Total	Diablo Contractors Inc One Crow Canyon Court Suite 210 San Ramon, CA 94583 (510) 552-8250 Unit /LS Price	Diablo Total
1	Mobilization	Lump Sum	$ 53,400.00	$ 53,400.00	$120,000.00	$ 120,000.00	$ 70,000.00	$ 70,000.00
2	Demolition	Lump Sum	$140,130.00	$ 140,130.00	$ 82,000.00	$ 82,000.00	$405,000.00	$ 405,000.00
3	Pier Superstructure Steel Framing	Lump Sum	$111,700.00	$ 111,700.00	$114,200.00	$ 114,200.00	$200,000.00	$ 200,000.00
4	Pier Wood Deck, Railing and Bullrail	Lump Sum	$227,980.00	$ 227,980.00	$124,900.00	$ 124,900.00	$250,000.00	$ 250,000.00
5	View Deck Stair, Ramp, Decking, and	Lump Sum	$ 19,620.00	$ 19,620.00	$122,000.00	$ 122,000.00	$ 20,000.00	$ 20,000.00
6	Electrical Work	Lump Sum	$ 34,290.00	$ 34,290.00	$ 84,000.00	$ 84,000.00	$ 65,000.00	$ 65,000.00
7	Plumbing Work	Lump Sum	$ 11,000.00	$ 11,000.00	$ 85,000.00	$ 85,000.00	$ 30,000.00	$ 30,000.00
1	Furnish and Drive Indicator Piles, EACH	8	$ 14,600.00	$ 116,800.00	$ 4,200.00	$ 33,600.00	$ 4,000.00	$ 32,000.00
2	Extract Pile and Redrive, EACH	2	$ 4,300.00	$ 8,600.00	$ 7,400.00	$ 14,800.00	$ 6,000.00	$ 12,000.00
3	Furnish and Drive Pile Extensions, EACH	3	$ 4,600.00	$ 13,800.00	$ 6,000.00	$ 18,000.00	$ 5,000.00	$ 15,000.00
4	Furnish 36 Foot Long Plastic Covered 8" Standard Weight Steel Pipe Pile Portion of Bearing and Batter Piles, EACH	64	$ 1,800.00	$ 115,200.00	$ 2,200.00	$ 140,800.00	$ 2,000.00	$ 128,000.00
5	Furnish 8" Dia. Standard Weight Steel Pipe Pile Portion of Bearing and Batter Piles, LINEAL FOOT	2300	$ 9.14	$ 21,022.00	$ 24.00	$ 55,200.00	$ 20.00	$ 46,000.00
6	Field Fabricate, Drive and Cut-off Bearing Piles, LINEAL FOOT	2400	$ 53.04	$ 127,296.00	$ 38.00	$ 91,200.00	$ 35.00	$ 84,000.00
7	Field Fabricate, Drive and Cut-off Batter Piles, LINEAL FOOT	2500	$ 41.79	$ 104,475.00	$ 39.00	$ 97,500.00	$ 35.00	$ 87,500.00
8	Furnish Fender Piles, EACH	36	$ 2,000.00	$ 72,000.00	$ 2,400.00	$ 86,400.00	$ 2,000.00	$ 72,000.00
9	Drive and Cut-off Fender Piles, EACH	36	$ 473.00	$ 17,028.00	$ 1,400.00	$ 50,400.00	$ 1,200.00	$ 43,200.00
10	Furnish and Install Light Poles and Fixtures, EACH	13	$ 3,500.00	$ 45,500.00	$ 4,100.00	$ 53,300.00	$ 5,000.00	$ 65,000.00
11	Furnish and Install Benches, EACH	4	$ 1,400.00	$ 5,600.00	$ 918.00	$ 3,672.00	$ 2,000.00	$ 8,000.00
12	Furnish and Install Ladders, EACH	6	$ 1,700.00	$ 10,200.00	$ 4,000.00	$ 24,000.00	$ 2,000.00	$ 12,000.00
13	Install Cleats, EACH	14	$ 479.00	$ 6,706.00	$ 435.00	$ 6,090.00	$ 500.00	$ 7,000.00
14	Install Bollards, EACH	2	$ 757.00	$ 1,514.00	$ 2,000.00	$ 4,000.00	$ 1,000.00	$ 2,000.00
15	Concrete for Piling, CY	48	$ 644.00	$ 30,912.00	$ 120.00	$ 5,760.00	$ 300.00	$ 14,400.00
	Totals			$1,294,773.00 see note 1		$1,416,822.00 see note 2		$1,668,100.00 see note 3

Note 1: Bid total corrected to this amount from total appearing in bid of $1,294,803.

Note 2: Total to unit price item no. 10 adjusted for estimated quantity of 13 per Addendum No. 6.

Note 3: Total to unit price item no. 10 adjusted for estimated quantity of 13 per Addendum No. 6. Also unit price item no. 7 corrected to total of $87,500 from $87,000.

PORT OF SAN FRANCISCO

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MEMORANDUM

November 4, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to Enter into an Exclusive Right to Negotiate for the Development of the Rincon Park Restaurant

DIRECTOR'S RECOMMENDATION: APPROVE EXCLUSIVE RIGHT TO NEGOTIATE WITH NICE VENTURES INC.

BACKGROUND

On July 23, 1998, the Port issued a Request for Proposals ("RFP") for the Restaurant Development Opportunity at Rincon Park. In this RFP, the Port solicited proposals from qualified Respondents ("Respondents") for the development and operation of a new restaurant adjacent to and south of the planned Rincon Park. The Park will be an approximately three acre park along The Embarcadero Promenade between Howard and Harrison Streets. At the Park's southern end, 20,000 square feet (the Site") has been set aside for the development of a restaurant building, and the remainder for outdoor support space, including outdoor seating, public access and open space.

The Port stated in the RFP that it would select a qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a first class restaurant on the Site, with the goal of negotiating a ground lease and related documents for the development and lease of the Site. The RFP further stated that the Commission intends to select a Respondent that can successfully create an outstanding culinary destination on the waterfront, will take full advantage of the spectacular Bay, Bay Bridge and City views and Park setting of this unique Site, and activate and enliven Rincon Park by drawing people to the waterfront and providing an amenity that will encourage them to extend their visit.

THIS PRINT COVERS CALENDAR ITEM NO. 7A

The RFP stated that the selected Respondent must have extensive experience in the financing, development and operation of first class restaurants, and preferably should possess experience with the start-up of new restaurant operations.

STAFF ANALYSIS OF RESPONSES

Two Respondents submitted responses to this RFP. Port staff has reviewed these two submittals with input on the financial and economic aspects of the proposals from CGMS, the Port's independent financial advisor. Staff analyzed Respondent's proposals against the criteria in the RFP and has concluded the following:

A. Experience and organization of the Respondent's team.

While both teams include members experienced in the development and operation of restaurants, the Nice Ventures Inc. team appears superior because the major partners have worked together on other successful projects in San Francisco. In addition to their proven track record with San Franciscan diners, the partner that will be added for this venture, GPS Park Restaurant, Inc., a proposed subsidiary of the GAP, will have a major stake in ensuring a quality restaurant development in the Park that will be at the "front door" of the Gap headquarters building. The Gap will be investing $2 million in the development of the Park, and will be responsible for its maintenance over the next ten years. As the restaurant's neighbor, they will share the Port's concern with ensuring a quality development to anchor the southern end of Rincon Park.

In addition, the roles of the team members are more clearly defined than in the Phoenix Proposal, most likely because many members of the team and the consultants have worked together in the past. The new members to the team will focus primarily on exterior architecture, landscape architecture and construction management. Although they have not apparently worked before with the Nice Ventures, Inc. team, they are uniquely qualified to ensure the success of many of the Port's qualitative goals for the restaurant because they are involved in the Rincon Park and/or Gap development projects. For example, by using the same landscape architect for the Restaurant and the Park (The Olin Partnership) the Port's objective of activating the Park presumably can be more easily attained.

Finally, the primary members of the Nice Ventures, Inc. team are local, or regularly in San Francisco because of ongoing projects. Many of the major members of the Phoenix Team (e.g. its primary investors, restaurant operators and project manager) currently reside as far away as India and Australia. For a time sensitive project such as the Rincon Park Restaurant, Staff believes this is a considerable disadvantage.

B. Experience of Restaurant Operator.

Both proposed restaurant operators appear to be culinary stars. They both have won numerous awards, and enjoyed very positive reviews and press. Staff believes that the Nice Ventures, Inc. proposal is superior in that the key

members of the team responsible for the restaurant operations (Reed Hearon, John O'Neill and Scott Warner) can be expected to remain involved in the restaurant for a longer period than the Phoenix proposal. Although the Phoenix proposal states that the restauranteurs (Neil Perry and Trish Richards) will be available for initial phases of the development of the restaurant concept, staffing training, etc, and opening of the facilities, the longer term management and operation of the restaurant is unclear.

C. Restaurant Concept

Both restaurant concepts are interesting. They take advantage of San Francisco's unique abundance of seafood and fresh produce. The Nice Ventures, Inc. proposal is Italian and Southern French inspired, while the Phoenix proposal is Asian inspired. Staff believes that the Nice Ventures, Inc. proposal is more sophisticated in that the restaurant concept is much more carefully tied to the indoor/outdoor nature of this remarkable setting. For example, it includes outdoor cooking and more focussed attention to the creation of an outdoor sense of place, as well as significantly more outdoor seats. Staff also believes that the idea of creating two smaller buildings, rather than one facility that tries to be everything to all people is a better strategy for success.

Although staff believes that the Phoenix proposal appears to better address the needs of Park frequenters by providing food that can easily be taken out to eat in the Park, the Nice Ventures, Inc. proposal does discuss the possibility of providing vendors in the Park, and staff believes that this idea can be pursued further during negotiations should the Commission decide to pursue negotiations with Nice Ventures, Inc.

D. Design and Engineering Consultants

As discussed above, the Nice Ventures, Inc. proposal has incorporated a superior team to ensure that development interfaces well with the Park. In addition, the architect responsible for the interior has a proven record in creating unique restaurant environments that work well with the restauranteur's concepts and that appeal to San Franciscans. Furthermore, by selecting William Wilson, the construction manager for the Park, as the construction manger for the restaurant, the overall coordination and phasing of both projects should proceed more smoothly.

E. Conceptual Design for Improvements

As discussed previously, Staff believes that the Nice Ventures, Inc. proposal provides a more sophisticated approach to creating a sense of a gathering place on the waterfront. Staff is concerned about the restaurant's relationship to the historic resources in the area, including the Hills Brothers Building and the Fire Boat Station. In addition, staff is concerned that the intensity of landscaping shown on the northern end of the restaurant site could preclude the feeling of movement between the restaurant and the Park which is a desired public

objective. Staff is confident, however, that these issues can and will be addressed during the community and agency review and comments processes expected for this project.

F. Financial Capacity and Plan

The Phoenix proposal is largely dependent on major equity investment(s) by individuals, at least one of whom has major real estate holdings in India. The liquidity of these holdings is not clear. The Nice Ventures, Inc. proposal relies primarily on debt financing of a magnitude that does not appear to have been sought previously by Nice Ventures, Inc., most likely because their other restaurants did not involve the major construction costs associated with a ground leases. Staff believes, however, that Nice Ventures, Inc. is the less speculative of the two proposals because Nice Ventures, Inc. has an outstanding local reputation for success in its restaurant endeavors.

G. Economic Return to the Port

In the short term, the Nice Ventures, Inc. proposal would appear to provide less rental income to the Port because of the high level of rent credits included in their proposal. These rent credits are far in excess of the Port Commission's customary policy for rent credits, and Port staff expects to negotiate these downward to ensure higher revenues to the Port. Over the long term, the Nice Ventures proposal appears to offer higher return to the Port.

H. Financial Viability

Both proposals estimate a capital investment of $6 - $8 million for the Restaurant. Both include optimistic sales projections which, if met, would justify this level of investment, ensure a healthy return to the Port and provide a solid financial return to investors. A comparison of sales projections for the two proposals is attached as Exhibit A.

I. Diversity Program

Both teams appear to be sensitive to diversity issues and exhibit a willingness to work further with the Port on this issue.

EXCLUSIVE NEGOTIATIONS

As provided in the RFP, after evaluation and determination of the most qualified Respondent(s), Port staff may recommend that the Port Commission authorize staff to enter into exclusive negotiations with a single Respondent. The Exclusive Right to Negotiate, a similar form of which was included in the RFP, is attached hereto as Exhibit B. Upon Port Commission authorization of exclusive negotiations, the selected Respondent must submit a $40,000 non-refundable fee (inclusive of the Earnest Money

Deposit already provided by the Respondent) for a four-month period of exclusive negotiations during which:

- A lease agreement and related documents for the lease and development of the Site in a final form approved by the San Francisco City Attorney will be negotiated incorporating specific terms including, but not limited to, the Port's and lessee's responsibilities, the economic parameters, development standards and requirements, and a performance schedule;
- The selected Respondent will complete its "due diligence" review of the Site, finalize financial projections, and complete preliminary development plans including, but not limited to floor plans, elevations, and renderings; for the Site;
- The selected Respondent, with the Port's assistance, will complete the project approval processes and any required supplemental environmental review.

The period of exclusive negotiations may be extended solely at the Port's option. The fee for extending the period for exclusive negotiations will be $5,000 per month payable in advance.

STAFF RECOMMENDATION

Based on Staff's analysis of the two proposals submitted for the Rincon Park Restaurant, Staff recommends that the Port Commission authorize Staff to enter into exclusive negotiations with Nice Ventures Inc. for the development of the Rincon Park Restaurant. It should be noted that Nice Ventures, Inc. has proposed two material terms with which Port staff does not agree. It proposed a rent credit of up to $6 million. It also proposed that the Port would deliver the site with utility connections in place, graded and free of hazardous materials. Port staff anticipates reaching a mutually satisfactory resolution to these issues during the exclusive negotiation period.

Prepared by Paul Osmundson
Director of Planning and Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **98-106**

WHEREAS, Charter Section B3.581 grants to the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section B3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on July 23, 1998, the Port issued a Request for Proposals for the Restaurant Development Opportunity at Rincon Park ("RFP"); and

WHEREAS, Nice Ventures Inc. and the Phoenix Project Team submitted responses to the RFP on September 30, 1998 which complied with the submittal requirements stated in the RFP and which have been reviewed and evaluated by Port Staff, with input on the financial and economic aspects of the proposals from CGMS, the Port's independent financial advisor; and

WHEREAS, based on this review, Port Staff has recommended that the Port Commission enter into exclusive negotiations with Nice Ventures Inc; and

WHEREAS, The Port Commission has reviewed the Port staff recommendation set forth in the Memorandum to Port Commissioners dated November 4, 1998, for Agenda Item 7A, and has determined that Nice Ventures Inc. best meets the qualification requirements for development of the Rincon Park Restaurant; now therefore, be it

RESOLVED, that the Port Commission hereby authorizes the Executive Director of the Port, or his designee, to execute an Exclusive Right to Negotiate agreement substantially in the form attached as Exhibit B and incorporating the economic parameters set forth in Exhibit 1 to the Exclusive Right to Negotiate outlined in the Memorandum of Agenda Item 7A for the November 10, 1998 Port Commission meeting, a copy of which is on file with the Port Commission Secretary, with the understanding that the final terms and conditions of the Lease and related documents negotiated between Nice Ventures Inc. and Port staff during the Exclusive Negotiation Period will be subject to the approval of the Port Commission; and be it further

RESOLVED, that the Port Commission does not accept the portion of Nice Ventures, Inc. proposal regarding rent credits and the condition of the site upon delivery, and authorizes staff to negotiate a satisfactory resolution of those issues during the exclusive negotiation period; and be it further

RESOLVED, that prior to considering any approval of a Lease and related documents, any environmental review required under the California Environmental Quality Act (CEQA) will be completed; and be it further

RESOLVED, The City Planning Department's Office of Environmental Review has determined that additional environmental review is not required for the project as identified in the RFP. If, through exclusive negotiations, actions and activities are identified that would require additional environmental review, and if such additional environmental review identifies significant adverse impacts that have not been mitigated, the Port retains absolute discretion to: (1) modify the project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the proposed project, (3) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse impacts of the project, or (4) approve the proposed project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts of the project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 10, 1998.

_____
Secretary

I:Rincon Park recommendation

EXHIBIT A

	PHOENIX	NICE VENTURES, INC.
Projected Sales (stabilized Operation)	$9.8 million	$19.4 million
Number of Seats	490 Indoor 370 Outdoor 120	1,000 Indoor 400 Outdoor 600
Square Feet	12,000	20,000*
Average Sales/Seat	$20,000	$19,400
Average Sales/Sq.Ft.	$816	$970

*Includes outdoor seating in the square footage

EXHIBIT B

EXCLUSIVE RIGHT TO NEGOTIATE

THIS EXCLUSIVE RIGHT TO NEGOTIATE ("Exclusive Right") is entered into as of this 27 day of October, 1998, by and between the **City and County of San Francisco** ("City"), **acting by and through its Port Commission** ("Port"), and Nice Ventures Inc., a California corporation ("Developer") upon the following facts, intentions and understandings of the parties:

A. By a Request for Proposals ("RFP"), dated July 23 1998, the Port solicited submittals of proposals from qualified parties to develop a restaurant on an approximately 20,000 square foot parcel located in the southerly portion of Rincon Park (the "Site"), located in the City and County of San Francisco. Submittals were received by September 30, and the Port Commission awarded the opportunity to enter into exclusive negotiations with the Port at its meeting of October 27, 1998, by Resolution No. 98 - 106.

B. The parties now desire to enter into this Exclusive Right to Negotiate to set forth the terms and conditions upon which Port and Developer will enter into lease negotiations and seek to complete a written lease and development agreement, and such other documents as are necessary to effect the lease of the Site (collectively, "Lease") for Port Commission approval.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Term**. The term of this Exclusive Right will be for four months, and will commence on October 28, 1998 and will expire on February 28, 1999, unless extended in accordance with Section 3 below. The term of this Exclusive Right, including any extensions, is hereinafter referred to as the "Exclusive Negotiation Period". During the Exclusive Negotiation Period, the Port will not solicit or consider any other proposals or negotiate with any other developer with respect to the development of the Site.

2. **Negotiating Fee**. Developer shall pay to Port a lump sum by cash payment in the amount of Forty Thousand and No/100 Dollars ($40,000), receipt of which Port hereby acknowledges. The $ 40,000 payment is in consideration for the right to negotiate exclusively with the Port for the Site during the Exclusive Negotiation Period, and is non-refundable whether or not the parties enter into a final Lease.

3. **Extension of Negotiating Period.**

a. Option Period. Developer shall have four one-month options (each an "Option Period") to extend the Exclusive Negotiation Period, commencing on March 1, 1999. Developer shall exercise each option to extend by written notice of the exercise of such option delivered with a cash, check or money order payment of Five Thousand Dollars ($ 5,000) per Option Period (each an "Option Payment") to Port at the address for notice set forth in Paragraph 10 below, prior to the commencement of the next Option Period. If additional environmental review is required for the project and the parties have been unable to execute a Lease prior to the expiration of the original term of this Exclusive Right (or the preceding Option Period, if applicable) due solely to the failure of the San Francisco Department of City Planning Office of Environmental Review ("OER") to complete its environmental evaluation in time for execution of a Lease, Port shall waive its rights to the applicable Option Payment. This waiver shall not apply if Developer creates a delay, including, without limitation, its failure to comply with requests for information or other OER requirements.

b. Option Payment Non-Refundable. Each Option Payment shall be non-refundable; provided, however, that the Port shall credit any Option Payment against rent due by Developer if the Developer delivers an Option Payment for a subsequent Option Period and the Port Commission approves a Lease for the Site with Developer before the commencement of that subsequent Option Period. Developer's failure to exercise any Option Period in accordance with this paragraph 3 shall extinguish all future Option Periods and shall terminate this Exclusive Right as of the last date of the Exclusive Negotiation Period or the applicable Option Period.

4. **Negotiation of Lease.**

a. Negotiation of Lease. During the Exclusive Negotiation Period, Port and Developer shall diligently meet, negotiate in good faith, and seek to complete a Lease for the Site in a form approved by the San Francisco City Attorney, incorporating

specific terms including without limitation the Port's and Developer's responsibilities, the economic parameters, development standards and requirements, and a performance schedule. The Lease will be subject to Port Commission approval. The parties are entering into this Exclusive Right to Negotiate based upon certain underlying principles and understandings developed through the RFP process, as set forth in Exhibit 1 attached hereto. The parties shall negotiate the Lease in substantial conformity with the basic principles and terms set forth in Exhibit 1; provided, however, such terms are subject to change by mutual agreement of the parties. The parties acknowledge that the terms of Exhibit 1 merely purport to set forth general principles upon which the parties have agreed; any binding Lease shall be subject to review and approval by the parties, their respective legal counsel, and the San Francisco Port Commission.

b. Final Action Subject to Environmental Review. The Port will not enter into any final Lease for the project which will allow for its development until there has been complete compliance with the California Environmental Quality Act (CEQA). Although OER has determined that additional environmental review is not required for the project as identified in the RFP, if, through exclusive negotiations, actions and activities are identified that would require additional environmental review, and if such additional environmental review identifies significant adverse impacts that have not been mitigated, the Port retains absolute discretion to: (1) modify the project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the proposed project, (3) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse impacts of the project, or (4) approve the proposed project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts of the project.

5. Regulatory Approvals, Submittals, and Disclosures.

a. Regulatory Approvals. The parties acknowledge that certain regulatory approvals are required for the development of the Project, including, but not limited to, all necessary approvals from the Bay Conservation and Development Commission ("BCDC"), design review by the Port and advisory design review by the Redevelopment Agency (collectively, "Regulatory Approvals"). Additional environmental review by OER, pursuant to CEQA, may be required under certain circumstances. As described in paragraph 4 above, any required additional environmental review by OER shall be completed prior to the approval of any Lease by the Port and the Board of Supervisors. The effectiveness of any such Lease shall be conditioned upon Developer obtaining all other Regulatory Approvals subsequent to approval of any such Lease by the Port Commission and Board of Supervisors.

b. Developer's Obligations. Except as provided in subsection 5.c below, Developer agrees:

(1) It shall diligently and in good faith pursue all Regulatory Approvals;

(2) It shall be solely responsible for applying for and obtaining all Regulatory Approvals, and Developer shall not seek any Regulatory Approval without first obtaining the approval of Port;

(3) It shall bear all costs associated with or complying with any necessary Regulatory Approval;

(4) It will pay and discharge any fines or penalties imposed as a result of the failure of Developer to comply with the terms and conditions of any Regulatory Approval, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

(5) To the fullest extent permitted by law, Developer agrees to indemnify and hold City, Port and their officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Developer's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

(6) It will undertake and complete its "due diligence" review of the Site, prepare financial projections, and complete preliminary development plans for the Site, including, but not limited to floor plans, elevations, and renderings.

(7) It will submit to Port, OER, BCDC and any other regulatory agency having approval over the project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies.

c. Port's Obligations. Port agrees that it will cooperate with Developer in filing for, processing and obtaining all Regulatory Approvals, and to the extent required by any regulatory agency issuing a Regulatory Approval, it will join with Developer as co-applicant in filing, processing and obtaining all Regulatory Approvals necessary for the development of the Site. Nothing contained herein shall be deemed to limit or otherwise constrain Port's discretion, powers and duties as a regulatory agency of the City with certain police powers.

6. **Non-Assignment.** The parties acknowledge that Port is entering into this Exclusive Right on the basis of the special skills, capabilities and experience of Developer. This Exclusive Right is personal to Developer and is non-assignable without the prior written consent of Port, which may be withheld in Port's sole discretion. Any attempted assignment of this Exclusive Right, or the dissolution, merger, consolidation or other reorganization of Developer or any cumulative or aggregate sale, transfer, assignment or hypothecation of more than 50% of the total capital stock of Developer shall, at the Port's option, be considered an event of default under this Exclusive Right and, upon Port's notice to Developer, shall immediately and without opportunity to cure give rise to Port's remedies provided in Section 7 hereof.

7. Default.

a. Event of Default. The occurrence of any of the following shall constitute a default by Developer after notice of the default and the expiration of the applicable cure period, if any:

(1) Failure to pay any sums due hereunder when due.

(2) Failure to perform or abide by any other provision of this Exclusive Right if such failure is not cured within twenty (20) days after notice has been given to Developer. If the default cannot reasonably be cured within 20 days, Developer shall not be in default of this Exclusive Right if Developer commences to cure the default within the 20-day period and diligently and in good faith continues to cure the default.

(3) Either (i) the filing by Developer of a petition to have Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors; or (ii) the filing by or against Developer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Developer or of any substantial part of Developer's assets.

b. Port's Remedies. In the event of default, Port, at its option, may terminate this Exclusive Right upon written notice to Developer, sent in accordance with Section 9 below. This remedy is not exclusive, but shall be cumulative with any remedies now or later allowed by law.

8. Attorneys Fees. In the event of any action or proceedings at law or in equity between the Port and Developer to enforce any provision of this offer to protect or establish any right or remedy of either party to this agreement, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses as determined by the court, including reasonable attorney's fees, incurred therein by such prevailing party; and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. For purposes of this Exclusive Right, reasonable fees of attorneys of the Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. Notices. Any notice given under this Exclusive Right shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Port: Director, Planning & Development
Port of San Francisco
Room 3100, Ferry Building
San Francisco, CA 94111
Telefacsimile: (415) 274-0412
Telephone: (415) 274-0546

Developer : Nice Ventures, Inc.
1606 Stockton Street
Mezzanine Level
San Francisco, CA 94133
Attention: Reed Hearon, President

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Exclusive Right shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A person may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, original, of a telefacsimile copy of the notice.

10. City Requirements

a. MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

b. Tropical Hardwood/Virgin Redwood Ban. City urges Developer not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, or any virgin redwood or virgin redwood wood product.

c. Burma (Myanmar) Business Prohibition. Developer is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a prohibited person or entity as defined in Section 12J.2(G) of the San Francisco Administrative Code. The Port reserves the right to terminate this Exclusive Right for default if the Developer violates the terms of this section.

11. Miscellaneous Provisions.

a. California Law. This Exclusive Right shall be construed and interpreted in accordance with the Laws of the State of California and City's Charter.

b. Entire Agreement. This Exclusive Right contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Exclusive Right. No prior drafts of this Exclusive Right or changes from those drafts to the executed version of this Exclusive Right shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Exclusive Right.

c. Amendments. No amendment of this Exclusive Right or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

d. Severability. Except as is otherwise specifically provided for in this Exclusive Right , invalidation of any provision of this Exclusive Right, or of its application to any person, by judgment or court order, shall not affect any other provision of this Exclusive Right or its application to any other person or circumstance, and the remaining portions of this Exclusive Right shall continue in full force and effect, unless enforcement of this Exclusive Right as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Exclusive Right.

e. No Party Drafter; Captions. The provisions of this Exclusive Right shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties.

Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this Exclusive Right.

f. Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

g. Authority. If Developer signs as a corporation or a partnership, each of the persons executing this Exclusive Right on behalf of Developer does hereby covenant and warrant that Developer is a duly authorized and existing entity, that Developer has and is qualified to do business in California, that Developer has full right and authority to enter into this Exclusive Right, and that each and all of the persons signing on behalf of Developer are authorized to do so. Upon Port's request, Developer shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

h. Waiver. No failure by Port to insist upon the strict performance of any obligation of Developer under this Exclusive Right or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Developer requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Developer. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Exclusive Right.

i. Time is of the Essence. Time is of the essence of each provision of this Exclusive Right.

WHEREFORE, this Exclusive Right to Negotiate was executed by the parties hereto on the date set forth below.

"Port"

CITY AND COUNTY OF SAN FRANCISCO,
Acting by and through its Port Commission

_____
By:
Director, Planning & Development

Dated:_____

"Developer"

_____
By

Dated:_____

Approved as to Form:
LOUISE H. RENNE
City Attorney

By:_____
Deputy City Attorney

Exhibit 1: Principles and Terms for Negotiations

Landlord	Port of San Francisco
Tenant	Rincon Restaurant LLC
Party to the Exclusive Right to Negotiate	Nice Ventures, Inc.
Lease Term	25 years
Options	Three five year terms
Rent	
Annual Minimum	To be negotiated, but in no event less than $200,000 per year
Annual Minimum Rent During Construction	To be negotiated
Percentage	6.25% of gross receipts (less sales tax) versus minimum rent, with structure to be negotiated in conjunction with rent credits
Rent Credits	To be negotiated
Escalations	10% every 3 years
Premises	20,000 square foot site, as shown on attachment; 12,000 square foot building footprint at ground floor not to exceed 17 feet in height
Condition of Site	To be negotiated
Estimated Construction Cost	$6 to $8 million
Minimum Equity Contribution	$1.8 million
Loan	$4.2 - $6.2 million

Exhibit 1: Principles and Terms for Negotiations (continued)

Shareholders	GPS Park Restaurant, Inc.; Reed Hearon, Nina Ebert; Barry Traub; Craig Forrest & Laura Thomas; Nice Ventures, Inc.
City Requirements	Tenant will comply with all City requirements, including Non-Discrimination in Contracts and Property Contracts, Tropical Hardwood and Virgin Redwood Ban, City Business with Burma Prohibited, MacBride Principles - Northern Ireland, Tobacco Products Advsertising Ban, San Francisco Integrated Pest Management Program, Employee Signature Authorization Ordinance and First Source Hiring Initiative.

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PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
www.sfport.com

MEMORANDUM

November 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian Thomas McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of month to month lease with the Red Cross at Pier 27

DIRECTOR'S RECOMMENDATION: APPROVE THE MONTH TO MONTH LEASE WITH THE RED CROSS

BACKGROUND

The American Red Cross has approached the Port Real Estate staff to lease 10,000 square feet of shed space at Pier 27 for storage of emergency supplies. The Port Real Estate staff and the American Red Cross have negotiated the terms of a lease (Lease No. 12685) containing the following terms and conditions.

Premises:	10,000 square feet of shed space at Pier 27 as shown on allotment A to this memorandum.
Term:	Month to Month
Commencement Date:	December 1, 1998
Base Rent:	$2,000.00 per month; $.20 per square foot per month.
Use:	General storage and directly related administrative use.

Commission approval is required to permit the rental rate of $.20 per square foot. The Port Commission approved Rental Sale Schedule (Port Commission Resolution No. 98-34) provides for a minimum rental rate of $ .43 per square foot at Pier 27.

Port staff recommends approval of Lease No. 12685 and the $.20 per square foot rental rate.

Prepared by: Nicolas J. Dempsey, Commercial Leasing Manager

THIS PRINT COVERS CALENDAR ITEM NO. **9A**

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **98-111**

WHEREAS, City and County of San Francisco Charter Section B 3.581 empowers the San Francisco Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within the jurisdiction; and

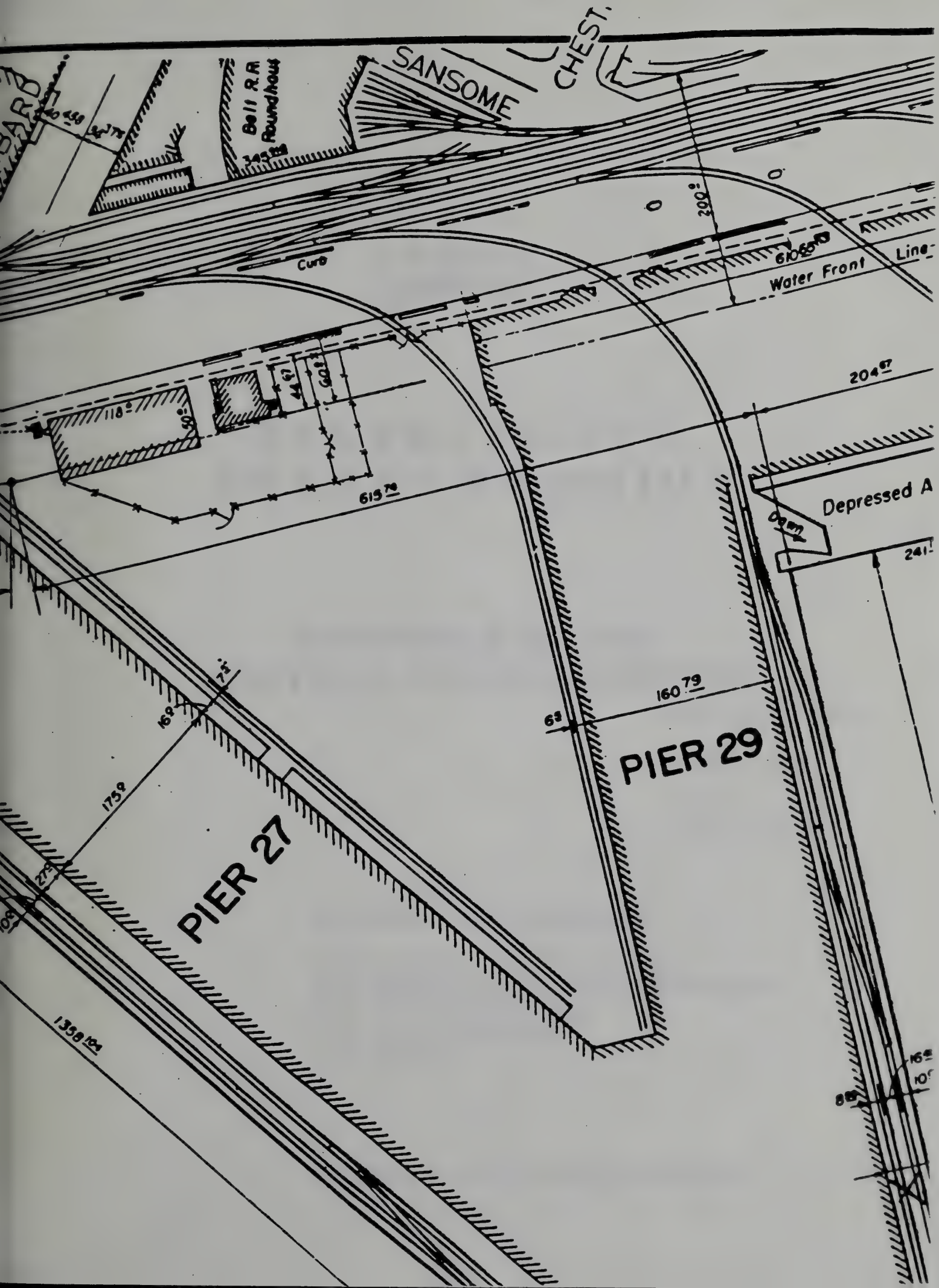
WHEREAS, the American Red Cross has approached the Port to lease a portion of Pier 27 to store emergency supplies; and

WHEREAS, the American Red Cross and the Port Real Estate staff have negotiated the terms of a lease (Lease No. 12685); now therefore be it:

RESOLVED, that the San Francisco Port Commission hereby approves Lease No. L-12685 between the Port and the American Red cross on the terms and conditions set forth in the memorandum for Item 9A of the Port Commission's November 10, 1998 meeting, a copy of which is on file with the Port Commission Secretary and in such form as is approved by the Executive Director, or his designee and the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 10, 1998.

_____
Secretary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SAN FRANCISCO
PORT COMMISSION

NOVEMBER 10, 1998
MINUTES OF THE SPECIAL MEETING

DOCUMENTS DEPT.

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MEMBERS, PORT COMMISSION

HON. DENISE McCARTHY, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHAEL HARDEMAN
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE MEETING
NOVEMBER 10, 1998

1. ROLL CALL

The meeting was called to order by Commission President McCarthy at 3:05 p.m. The following Commissioners were present: Denise McCarthy, Michael Hardeman and Pius Lee. Commissioner Kimberly Brandon arrived at 4:05 p.m. Commissioner Brian McWilliams was not present.

2. APPROVAL OF MINUTES - October 27, 1998 Special Meeting
- October 27, 1998 Regular Meeting

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the minutes for the October 27, 1998 special meeting were adopted.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the minutes for the October 27, 1998 regular meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report:

Mr. Wong reported that in response to the terrible devastation brought on by Hurricane Mitch, the Port offered to waive all Port charges on any humanitarian aid or relief cargoes to the shipping lines who serve Central America from San Francisco. The shipping lines have gratefully acknowledged the offer and will keep the Port informed on any upcoming shipments. Additionally, in conjunction with Marine Terminals Corporation, Port staff has arranged for the Consulate General of El Salvador to use a portion of Pier 80 for receiving, storage, loading and delivery of relief goods. Our thoughts and prayers are certainly with the people of Central America as they struggle with their recovery. Veronica Sanchez, Manager of Governmental Affairs, also gave a brief update of the Port's relief efforts and a status report on the various grant funds that the Port has applied for.

4. MARITIME

A. Approval of Five-Year Non-Exclusive Terminal Management Agreement with Metropolitan Stevedore Company for Pier 35. (Resolution No. 98-110)

Mr. Peter Dailey, Director of Maritime, requested Commission's approval of the Non-Exclusive management agreement with Metropolitan Stevedore Company to operate Pier 35 as the Port's cruise terminal.

Metropolitan Stevedore Company ("Metro") has been serving as the terminal operator of this facility under two license agreements that date back to when Metro acquired California Stevedore and Ballast ("CS&B") in 1990. The first License, entered into between the Port and CS&B in 1979 is an agreement where CS&B paid rent to the Port to conduct Marine terminal operations at Pier 35. This license describes the office space, waiting rooms, corridors, and gear storage and cargo spaces. On March 12, 1985 a second license was executed with CS&B that added floor space at the entrance of the pier. The two licenses simply describe the rental of space under conditions the Port required at the time of execution of the licenses and did not address any particulars pertaining to cruise terminal operations. Secondary use of the facility was not addressed in these licenses nor did they describe any promotion or marketing of the terminal to the cruise industry.

Metro bought CS&B in 1990 and since then has operated the terminal under the Metro name. Metropolitan Stevedore Company is a contract stevedore company with operations in seven locations on the West Coast. They currently operate cruise operations in the Port of Los Angeles and San Diego.

The Cruise ship industry has become one of the core portions of our maritime business portfolio. In order to meet the rising demands of this industry, the Port has realized that a partnership with our terminal operator is fundamental in generating the kind of service necessary to maintain and grow this business. Therefore negotiations this past year have directly addressed the need for an agreement that would provide an alliance in building the cruise ship business in San Francisco.

The Port and Metro have formulated a new management agreement that will solidify the management of Pier 35 for maritime use under the previous licenses but also addresses operational and marketing issues, such as scheduling vessel calls, shared maintenance of the facility, federally mandated security requirements, promotion and marketing of the terminal to the cruise ship industry and secondary uses of the facility. The proposed agreement creates a partnership between the Port and Metro to operate the facility whereby Metro will provide maritime terminal operations and special event coordination. Key issues for formalizing this agreement are needed such as compliance of regulations imposed on cruise terminals by the Department of Transportation's mandated Federal Passenger Terminal Security Act as well as the higher expectations of cruise line operators for terminal amenities.

Metro shall also manage special events at the terminal. All special event inquiries for that facility will be directed to Metro for them to determine appropriateness and scheduling. Metro will advise secondary users on all requisite permits and

regulations. No special event shall ever interfere with the operation of the Facility as the cruise terminal.

Management Agreement:

1. Premises:
   Approximately 242,149 sq. ft. Those portions of the passenger terminal and appurtenances thereto located at the premises commonly referred to as Pier 35. It does not include those areas of Pier 35 structure leased or available to be leased by the Port to tenants other than Metro.

2. Term:
   The agreement shall run for five years from the commencement date of December 1,1998 through January 1, 2003. Either party may terminate the agreement with 180 days notice without penalty, if the Port's primary site of cruise ship operations is moved from the Facility to another site.

3. Financial Terms:
   Metro shall pay to the Port an annual use fee for the facility of $76,000.00 payable in 12 equal monthly installments of $6,333.33.

   Metro shall establish a fee schedule for secondary uses of the facility. Fees collected from secondary uses of the facility shall be shared equally with the Port. Payment of which shall be due to the Port thirty (30) days after completion of the secondary event.

   Metro may grant financial credits and incentives to attract new users to the facility or to retain existing users. The Port may compensate Metro for these credits and incentives through use fee credits.

   Port staff recommends approval of the non-exclusive management agreement with Metropolitan Stevedore Company for Pier 35.

   Mr. Dailey introduced Tim Parker Vice-President and General Manager of Metropolitan Stevedore Company and Mr. Al Pratt, the current terminal manager.

   ACTION: Commissioner Lee moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-110 was adopted.

5. REAL ESTATE

A. Approval of two leases for surface parking between the Port and San Francisco Parking, Inc. at SWL 322-I located at Front and Broadway Streets (Parcel 1); Richard Stein, d.b.a. City Parking Company at Seawall Lot 330 located at the Embarcadero and Bryant Streets (Parcel 3). (Resolution No. 98-112)

Mr. Philip Smith, Director of Real Estate, indicated that on April 28, 1998, the Port Commission approved Resolution No. 98-73, authorizing Port staff to offer through competitive bidding two parcels located in the Northeastern Waterfront and one parcel located in the Central Waterfront, for operation of surface public parking lots. The process was to culminate in three separate leases, each with a term of two years. The successful bidder(s) would be those which proposed the highest rent for each parcel and who met the minimum qualifications for experience and financial standing.

On July 29, 1998, Port staff issued an invitation for bids. A major goal of the Port Commission was to encourage the participation of minority-owned and economically disadvantaged businesses. Staff consulted with the Human Rights Commission and the City Attorney's Office to determine appropriate methods for encouraging participation in the bid process by small, local, women, economically disadvantaged and minority owned businesses. The Port advertised extensively in a wide variety of publications intended to reach MBE/WBEs. This program was highly successful as the Port received requests for 42 bid packages and eventually received bids from 18 parking lot operators, 56% of which were MBE/WBEs.

On August 26,1998 a pre-bid conference was held, which included a site tour of the parking facilities. The due date for submittal of bids was September 15, 1998, at which time the bids were opened and ranked in order of highest bid. Copies of the bid results were sent to the Port Commission for review. The high bidders for the three parcels were:

Parcel 1. (Seawall Lot 322-I) San Francisco Parking, Inc.	$39,217.00
Parcel 2. (Seawall Lots 321, 323 and 324) Allright Cal, Inc.	$67,198.00
Parcel 3. (Seawall Lot 330) Richard Stein, d.b.a. City Parking Company	$47,096.00

Port staff has completed negotiations for two of the leases, and is prepared to request approval by the Port Commission of leases for Seawall Lot 322-I (Parcel 1) with San Francisco Parking, Inc. and Seawall Lot 330 (Parcel 3) with Richard Stein, d.b.a. City Parking Company. The proposed lease terms and conditions are:

Seawall Lot 322-I (Parcel 1)

(1) Tenant: San Francisco Parking, Inc. (Lease #L-12663)
(2) Premises: Approximately 37,812 square feet of Seawall 322I
(3) Term: Two (2) years
(4) Monthly Rent: $39,217.00 per month with annual CPI adjustment.
(5) Hotel Development Site. Tenant acknowledges that the planning and pre-

construction phases of such a project, and the activities associated with the project may require the Port and/or developer to enter the site to conduct pre-development inspections and surveys. Said activities may include, but are not limited to, geotechnical studies, utility surveys, soils testing, seismic evaluation and miscellaneous site data collection. Port shall give Tenant five (5) days prior written notice of Port's intent to enter Premises for conducting of said surveys or studies.

Seawall Lot 330 (Parcel 3)

(1) Tenant: Richard Stein, d.b.a. City Parking Company. (Lease #L-12665)
(2) Premises: Approximately 124,065 square feet of Seawall Lot 330; with option by Port to expand if space south of the Ferry Building becomes available for surface parking operations. For expansion site operations, Tenant shall pay to the Port percentage rent equal to 66% of gross receipts, after parking tax.
(3) Term: Two (2) years.
(4) Monthly Rent: $47,096.00 per month with annual CPI adjustment.
(5) ESPN X-GAMES: Tenant acknowledges that the Port has made a commitment to the ESPN X-Games to provide up to 50,000 square feet of space at Seawall Lot 330 for production vehicle staging during the event. The ESPN X-Games are scheduled for June 1, 1999 to July 3, 1999, and June 1, 2000 to July 3, 2000. The Tenant will be entitled to a rent credit in direct proportion to the square footage reduction of the Premises as a result of the ESPN X-Games' temporary use of a portion of the Premises.

Both Leases include the following additional provisions: In addition to Worker's Compensation, Comprehensive General Liability and Comprehensive Automobile Insurance, the Tenant must also carry Garage Liability and Garage Keeper's Insurance with a limit of not less than one million dollars ($1,000,000).

Tenant is required to pay highest general prevailing wages in accordance with prevailing wage rates adopted by the San Francisco Board of Supervisors pursuant to Section 6.37 of the San Francisco Administrative Code.

Additionally, since both of the parcels are designated as future development sites, the Port shall retain the right to recapture either parcel upon sixty (60) days written notice to the operator.

The total Annual Base Rent from the two leases will be $1,035,756.00.

Board of Supervisors Approval of Leases
Under Charter Sections 2.110 and 9.118, leases having anticipated revenue to the City of one million dollars or more are subject to approval by the Board of Supervisors. The lease with Richard Stein, d.b.a. City Parking Company for Seawall Lot 330 (Parcel 3) will require approval from the Board of Supervisors because the lease will generate over one million dollars during the term.

RECOMMENDATIONS:
Staff recommends that the Commission approve the attached resolution authorizing the Executive Director of the Port to enter into two leases, each with two-year terms, for public parking lots with San Francisco Parking, Inc. (Lease #L-12663) at Seawall Lot 322-I (Parcel 1); and Richard Stein, d.b.a. City Parking Company (Lease #L-12665) at Seawall Lot 330 (Parcel 3).

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 98-112 was adopted.

B. Informational Presentation: Negotiation of Memorandum of Understanding between the Port and the Pan Pacific Expo Group for Expo 2002.

Mr. Philip Smith, Director of Real Estate, indicated that at the Port Commission meeting of October 27, 1998 a presentation was made by the Bay Area Pan Pacific Exposition Group, Inc (PPE). The goal of the group is to mount an international exposition on San Francisco's waterfront in the year 2002.

PPE presented a preliminary transportation analysis, feasibility analysis and explained that strong interest had been expressed for the concept of an exposition by both large international corporations, as well as foreign countries.

A meeting was held between Port staff and representatives of the PPE on Thursday November 5th. At this meeting the following agreements and conclusions were reached between the PPE and the Port:

1. A team consisting of representatives of all of the relevant Port divisions (Executive, Real Estate, Planning and Engineering) would be convened to conduct an intensive series of discussions with the Exposition Group. These discussions would begin immediately and would hope to be completed by the end of December.

2. The Port would report back to the Commission at the first meeting in January on the findings and the results of these discussions. If these discussions have proceeded to an appropriate point, staff would present at the meeting a proposed Memorandum of Understanding (MOU) between he PPE and the Port. Such an MOU would clearly delineate performance standards that would have to be met prior to advancing to the next stage in the project.

3. The PPE and the Port staff will not limit their discussions to the site presented by the PPE representatives at the Port Commission meeting of October 27, 1998. The analysis will look at alternative sites that may be more suitable for the type of exposition being proposed by the PPE.

Staff will keep the Commission apprised as to the status of the discussions between the PPE and Port staff at subsequent Commission meetings.

Mr. Art Blum indicated that the PPE Group is prepared and looks forward to the negotiations with the Port.

6. FACILITIES & OPERATIONS

A. Approval to re-advertise for competitive bids for Contract No. 2617, "Pier 47A Reconstruction." (Resolution No. 98-109) **THIS ITEM HAS BEEN CONTINUED TO NEXT MEETING**

7. PLANNING & DEVELOPMENT

A. Approval to enter into Exclusive Right to Negotiate for the development of the Rincon Park Restaurant. (Resolution No. 98-106)

Ms. Anne Cook, Manager of Waterfront Development Projects, indicated that on July 23, 1998, the Port issued a Request for Proposals ("RFP") for the Restaurant Development Opportunity at Rincon Park. In this RFP, the Port solicited proposals from qualified Respondents for the development and operation of a new restaurant adjacent to and south of the planned Rincon Park. The Park will be an approximately three-acre park along The Embarcadero Promenade between Howard and Harrison Streets. At the Park's southern end, 20,000 square feet has been set aside for the development of a restaurant building, and the remainder for outdoor support space, including outdoor seating, public access and open space.

The Port stated in the RFP that it would select a qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a first class restaurant on the Site, with the goal of negotiating a ground lease and related documents for the development and lease of the Site. The RFP further stated that the Commission intends to select a Respondent that can successfully create an outstanding culinary destination on the waterfront, will take full advantage of the spectacular Bay, Bay Bridge and City views and Park setting of this unique Site, and activate and enliven Rincon Park by drawing people to the waterfront and providing an amenity that will encourage them to extend their visit.

The RFP stated that the selected Respondent must have extensive experience in the financing, development and operation of first class restaurants, and preferably should possess experience with the start-up of new restaurant operations.

Two Respondents submitted responses to the RFP. Port staff has reviewed the two submittals with input on the financial and economic aspects of the proposals from CGMS, the Port's independent financial advisor.

Ms. Cook indicated that the above-referenced item was first on the Port

Commission agenda for October 27, 1998. Shortly before that meeting, the Port received a letter from Anil Khetawat of the Phoenix Group stating objections to the staff recommendation that the Port enter into exclusive negotiations with Nice Ventures, Inc. for the development and operation of the Rincon Park Restaurant. The Port Commission decided to continue the matter to its November 10th meeting to give the Port time to review and comment on the Phoenix Group's letter.

Port staff has reviewed and commented on the Phoenix Group's letter and finds nothing in their letter which leads staff to change its original recommendation. Port staff has sent a response to the Phoenix Group addressing each of their concerns.

Staff believes that the Nice Venture's Inc. proposal is markedly stronger than the Phoenix Proposal in responding to the Selection Criteria set forth in the RFP. Staff further believes that any additional reviewers would reach the same conclusion. Of particular note, the Nice Venture Inc.'s proposal:

- Demonstrates clearer lines of authority and assignment of responsibilities.
- Identifies more readily available team members.
- More effectively demonstrates experience with and success of similar ventures.
- Demonstrates successful and established relationships with restaurant operators.
- Exhibits greater ability to implement development quickly and effectively.
- Demonstrates a more unique restaurant concept and better compatibility with the neighborhood and Park.
- Includes a superior conceptual design that best relates to the Park and the waterfront setting and encourages freedom of movement between the restaurant and the Park.
- Demonstrates a greater ability to raise and commit capital for construction and operations of restaurant ventures.
- Can be expected to achieve a higher overall return to the Port.

Mr. Cook indicated that staff received a second letter from Mr. Khetawat. Staff has reviewed the letter and found nothing that would change its original recommendation. She then requested Commission's approval for the exclusive right to negotiate with Nice Ventures.

Mr. Reed Hearon, principal of Nice Ventures, gave a brief background of their company and thanked the Commission for the opportunity to exclusively negotiate with the Port.

Commissioner McCarthy thanked Mr. Khetawat and the Phoenix Group for their efforts and she hoped that they would find other opportunities at the Port.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 98-106 was adopted.

years, founder executive director of the Cleveland Rock & Roll Hall of Fame. Peter Spurney, is a legendary event promoter. He was the chief executive officer of the Lake Placid 1980 Winter Olympics, the chief executive officer of the New Orleans World's Fair and the CEO of the American Freedom Train. Patrick Gallagher, from Douglas/Gallagher, is a renowned museum planning and exhibits designer. He is the principal design consultant to Malrite. He has designed the Museum of Jewish Heritage in New York, the U.S. Olympic Museum & Visitors Center in Colorado Springs and the principal exhibition designer for the Smithsonian for the last ten years. Ron Foster, from Wilbur Smith Associates, is well known in San Francisco for doing transportation analysis. Jeffrey Heller, from Heller/Manus Architects, will be providing architectural services, and others. Don Solem is the public relations component from Solem & Associates and Carl Heisler from ESA will be helping with the environmental aspect of the project.

Mr. Maltz thanked the Commission for the opportunity to present their concept. He indicated that the world is changing with high technology. The old concept of old museum is evolving into high tech, digital, high definition and new sound, whereby the audience who enters the museum does not feel constrained to be quiet. Although they intend to bring to Pier 45 a museum quality presentation, it is one where there will be enjoyment, entertainment as well as educational. It is a $30 million attraction. There are no financial contingencies; the funds are available and ready to go. This is a journey to San Francisco's colorful history; it is a state-of-the-art facility and a major investment and the future of the City. They are going to create 200 new jobs for San Francisco and increase revenues for both the Port and the City.

Dennis Barrie reiterated that this is a $30 million project, a 75,000 sq. ft. facility on Pier 45 dedicated to the history, culture and the unique lifestyle of San Francisco. Visitors to the museum begin their journey through San Francisco at the Wharf by entering the 9,000 sq.ft. *Embarcadero Way*. The street setting itself is a lively marketplace, combining the sights, smells and sounds of commerce authentic to San Francisco throughout its history.

Making their way down the *Embarcadero Way*, visitors will enjoy a series of waterways and fountains. *Fisherman's Fountain* depicts a massive net of simulated fish being hauled up with water pouring from the net onto the street.

The heart of their project is the *Experience*, a 40,000 sq. ft. interactive history state-of-the-art museum. Visitors enter the *Experience* through an alley, the business center of the Gold Rush. The entrance into the *Instant City* is a multi-media experience using interactive technology, traditional photo displays, artifacts and unique story-telling devices that depicts the nearly overnight transformation from a City of 300 to 25,000. The *Instant City* exhibit explores the stories of early San Francisco, the 49ers, The African American Experience, the Chinese Experience and the Birth of a City. There will be street performers that were products of the period and there will be events that illustrate the period. There will also be a serious exhibit on the maritime history of the City.

8. FINANCE & ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of month-to-month lease with American Red Cross at Pier 27. (Resolution No. 98-111)

Mr. Philip Smith, Director of Real Estate, indicated that the American Red Cross approached the Port to lease 10,000 square feet of shed space at Pier 27 for storage of emergency supplies. Port staff and the American Red Cross have negotiated the following terms and conditions of the lease (Lease No. 12685):

Premises:	10,000 square feet of shed space at Pier 27 as shown on allotment A to this memorandum.
Term:	Month to Month
Commencement Date:	December 1, 1998
Base Rent:	$2,000.00 per month; $.20 per square foot per month.
Use:	General storage and directly related administrative use.

Commission approval is required to permit the rental rate of $.20 per square foot. The Port Commission approved Rental Sale Schedule (Port Commission Resolution No. 98-34) provides for a minimum rental rate of $ .43 per square foot at Pier 27.

Jim Topping, CEO American Red Cross, applauded staff's efforts in putting this deal together. He commented that this is an excellent deal due to its short term and the space is particularly adaptable to them.

Due to Red Cross' excellent work, Commissioner Lee requested the base rent be decreased from 20 cents to 10 cents. Commissioner Hardeman seconded the motion.

ACTION: Commissioner Lee moved approval as amended; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-111, as amended was adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Eula Walters indicated that Lots 202 and 203 were designated as a public park by Supervisor Bierman in 1996 and would like to see this happen. She understood that this is on hold until a developer for the Ferry Building has been selected and she promised the Commission that she would be back to raise this issue.

Mr. James Reuben, representing Malrite, introduced the Malrite representatives. Milton Maltz is the chairman and chief executive officer of Malrite Company. Dennis Barrie is the President of the Malrite Company Entertainment Division. He left the Rock & Roll Hall of Fame to join the Malrite Company. Mr. Barrie was with the Smithsonian for 11

The *Barbary Coast* is a notorious rowdy, robust and risque neighborhood which was well known in the late 1800s. From *Barbary Coast*, visitors come to Pacific Street, known as the *Terrific Pacific*, home to vaudeville, burlesque and the birth of the blues in San Francisco.

At the end of *Terrific Pacific*, visitors enter a Nickelodeon theater housed in a converted storefront. While seated in the theater, an earthquake the magnitude of 8.25 on the Richter scale rips through the movie house for a full 48 seconds and experiencing first hand the raging fires, screaming sirens and smells of smoke and soot.

The visitors enter the *City Reborn* on a catwalk structure of the Golden Gate Bridge suspended above the 3,000 sq. ft. scale model of San Francisco post-earthquake. Over a five-minute period, the visitor watches a chronologically and architecturally precise recreation of the City Reborn and decade-by-decade, landmark buildings and districts appear.

The visitor then boards "Ken Kersey's bus" for the *Ride,* which combines motion, sound and visual effects to immerse the visitor in an unparalleled experience. The ride starts at City Light Bookstore, continues toward Haight-Ashbury and approaches the Fillmore. It continues through the 70s and 80s and approaches present-day San Francisco.

A unique extension of the story of San Francisco is with the specialized retail opportunities – shopping at *Embarcadero Way* and the *San Francisco Marketplace*. After the visitor has left the *San Francisco Marketplace*, *Adventure Re*tail abounds mining for gold, virtual captains, escape from Alcatraz and others.

This is a project that entices and brings to Fisherman's Wharf families from San Francisco and all over the world.

Mr. Maltz added that they are going to hire an education director to work with both the parochial and public school systems. They are prepared to offer field day trips and they will work with schools to provide a curriculum on the history of this City and its people. They are also going to establish an advisory board, where community leaders from various walks of life work with them on an ongoing basis to change exhibits and encourage people to tell them what this museum should have. He concluded by thanking the Commission and mentioned that time is important to them. This is the first project of this nature that they have ever done. They couldn't think of a more exciting, colorful, rich history than San Francisco. They are prepared to put up their money and asked for the opportunity for the Port to negotiate and work with them.

Commissioner McCarthy directed staff to return to the Commission with their recommendation.

11. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 4:06 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

b. Property: Pier 27/29 development opportunities
Person Negotiating:
Port of San Francisco: Larry Florin, Director, Special Projects

c. Property: Seawall Lot 313 located at Northpoint and the Embarcadero
Person Negotiating:
Port of San Francisco: Kirk Bennett, Manager, Waterfront Development Projects

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION MATTER:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one cases).

12. RECONVENE IN OPEN SESSION

At 6:30 p.m., Commissioners McCarthy, Brandon, Hardeman and Lee returned from executive session and convened in public session.

ACTION: Commissioner Hardeman moved approval to not disclose any information discussed in executive session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:30 p.m.

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SPECIAL MEETING – PLEASE NOTE DATE/TIME OF THE MEETING
→→→3:00 P.M., TUESDAY, NOVEMBER 17, 1998←←←
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

AGENDA

1. ROLL CALL

2. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

3. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION MATTER:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

- Trowbridge Corporation, California Outdoor Advertising v. Port of San Francisco.

4. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

5. ADJOURNMENT

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100. The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142. There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building. Assistive listening devices are available for use in the Port Commission Meeting. The following services are available on request 72 hours prior to the meeting: (1) American Sign Language Interpreters; (2) A Sound Enhancement System; (3) The use of a reader during the meeting and (4) copies of the agenda or minutes of the meeting in alternative formats. Please contact Kevin Jensen, the Port's ADA Coordinator at (415) 274-0555. Late requests will be honored if possible. Please contact the Commission Secretary at (415) 274-0406 should you require large print of the agenda.

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NOVEMBER 17, 1998
MINUTES OF THE SPECIAL MEETING

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HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHAEL HARDEMAN
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
NOVEMBER 17, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 3:03 p.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon, Michael Hardeman, Brian McWilliams and Pius Lee.

2. NEW BUSINESS/PUBLIC COMMENT

Carolyn Garrety, No. California/No. Nevada Regional Director for the National Association of Women in Construction and representative of the Women Business Council in San Francisco, indicated that the Ferry Building proposal does not include women and minorities. She suggested that the Commission should look at proposals that include women and minorities for the development and retrofit of the Ferry Building. They have worked long and hard to establish a place in the industry and deserve a right to be included in the process. They came up with a joint national statement (from the Associated General Contractors, the National Minority Contractors Association, Women Construction Owners and Executives and National Association of Women in Construction) in which they believe that all public, private, government work should be inclusive and are taking it to Congress. They will continue their fight for equal opportunity within the construction industry. They hoped that as the Commission votes on this project, women and minorities are included.

James Haas spoke about the aspect of community impacts and benefits. He mentioned that the Peat & Marwick report that was done for the Redevelopment Agency for the Third and Mission Street project included the community impacts and benefits. There was nothing included in the Ferry Building proposal. There was no mention of the people who worked on making the public improvements which he believed is the key to making the project work. He believed that someone like him who has had that kind of experience should have been highlighted. To confirm his assertion, he brought a copy of a Board of Supervisors' resolution commending him of his 9-year public work. He emphasized that the Mentmore/Mills team has taken an interest on Gabbiano's Restaurant and they plan to deal not only with the Ferry Building but the entire area. In light of the Peat & Marwick report, he asked the Commission to reevaluate its decision.

3. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

At 3:08 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Ferry Building
Person Negotiating:
Port of San Francisco: Paul Osmundson, Director of Planning & Development

An executive session has been calendared to instruct the real estate negotiator regarding responses received to the Request for Proposals.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION MATTER:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

- Trowbridge Corporation, California Outdoor Advertising v. Port of San Francisco.

4. RECONVENE IN OPEN SESSION

At 4:10 p.m., Commissioners McCarthy, Brandon, Hardeman, McWilliams and Lee returned from executive session and convened in public session.

ACTION: Commissioner Hardeman moved approval to not disclose any information discussed in executive session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 4:10 p.m

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PORT COMMISSION

SPECIAL MEETING – PLEASE NOTE DATE/TIME OF THE MEETING
→→→4:00 P.M., TUESDAY, NOVEMBER 17, 1998←←←
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

AGENDA

1. **ROLL CALL**

2. **PLANNING & DEVELOPMENT**

   A. Authorization to enter into an Exclusive Right to Negotiate for the rehabilitation and master lease of the Ferry Building for retail and office uses. (Resolution No. 98-114)

   B. Informational presentation on the proposed design for the development of Pier One.

3. **EXECUTIVE**

   A. Amending San Francisco Harbor Code Article 13, Section 100, to authorize non-commercial outdoor signs and advertisement on waterborne vessels within Port jurisdiction under limited circumstances, and revise and clarify prohibition of other types of outdoor signs and advertisement on waterborne vessels within Port jurisdiction. (Resolution No. 98-113)

4. **NEW BUSINESS / PUBLIC COMMENT**

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5. **EXECUTIVE SESSION**

   A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

   B. CLOSED SESSION

      (1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8.

This session is closed to any non-City/Port representative.*

a. Property: Pier One
Person Negotiating: Port of San Francisco: Kirk Bennett, Manager Waterfront Development Projects
AMB Property Corporation: Janice Thatcher*

Under Negotiation: ___ Price ___ Terms of Payment _X_ Both
An executive session has been calendared to discuss real estate negotiations between the Port and AMB Property Corporation regarding Pier One.

b. Property: Piers 90-92, 94-96
Person Negotiating
Port of San Francisco: Larry Florin, Director, Special Projects and Mark Lozovoy, Senior Property Manager

An executive session has been calendared to discuss proposed real estate negotiations.

c. Property: Pier 80
Person Negotiating
Port of San Francisco: Philip Smith, Director of Real Estate
RMC Lonestar: Eric Woodhouse, Executive Vice President*

Under Negotiation: ___ Price ___ Terms of Payment _x_ Both
An executive session has been calendared to discuss real estate negotiations between the Port and RMC Lonestar regarding Port property located Pier 80.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

b. Discuss existing litigation matter pursuant to subdivision (a) of the California Government Code Section 54956.9 (one case).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.

6. **RECONVENE IN OPEN SESSION**

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

7. **ADJOURNMENT**

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CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
NOVEMBER 17, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 4:11 p.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon, Michael Hardeman, Brian McWilliams and Pius Lee.

2. PLANNING & DEVELOPMENT

A. Authorization to enter into an Exclusive Right to Negotiate for the rehabilitation and master lease of the Ferry Building for retail and office uses. (Resolution No. 98-114)

Mr. Paul Osmundson, Director of Planning & Development, thanked members of numerous City agencies, citizens groups that provided assistance to the Port specifically the Waterfront Plan Advisory Board. Five years ago, the Port was the beneficiary of pro-bono services from a number of citizens. Earlier this year, the Port established the Ferry Building Advisory Group comprised of Jane Morrison, Anne Halsted, Julia Viera, Herb Lembke, Don Wyler, Bill O'Connor, Marina Secchitano and David Bahlman. He thanked the citizens of San Francisco for their dedication and involvement during the process. The Ferry Building has long stood as a symbol of the San Francisco waterfront and is one of the City's most widely and easily recognized landmark buildings. The building serves a vital transportation function as a link between increasingly busy ferry operations on the bayside and existing and planned transit operations on the cityside. The building is also a significant resource for the Port of San Francisco, housing the Port's administrative offices and providing important commercial rental income.

For the past five years, the Port worked to develop, evaluate and refine alternative concepts for the Ferry Building, in preparation for the issuance of a Request for Developer Qualifications and Proposals (RFQ/P). With the assistance of a number of professional consultants, the Port analyzed the economic, financial, physical, design and regulatory feasibility of the project. In September 1994, the Commission was presented with results of those analyses and investigations. The major conclusions of these studies were that the renovation of the Ferry Building was a mixed-use project with retail uses on the ground floor, including a market hall, restaurants and other complimentary shops, office and other uses on the upper floors, was a feasible development opportunity given favorable market conditions.

In April 28, 1998, the Port Commission under Resolution No. 98-41 approved issuance of a Request for Developer Qualifications and Proposals (RFQ/P) in May 1998 for rehabilitation and lease of the Ferry Building in an "as is condition" to include subleasing and property management. The RFQ/P was issued on May 15, 1998.

As indicated in the RFQ/P, the Port believes that the Ferry Building Rehabilitation Project must achieve three major goals:

- Be a signature project that achieves a high level of public use and support.
- Strengthen the Port's long-term financial position.
- Enhance the Port's ability to undertake other projects.

Mr. Osmundson thanked the following development teams who responded to the RFQ/P: Madison Marquette Realty Services, Mentmore Development Company/the Mills Corporation, TrizecHahn Development Corporation, and William Wilson & Associates. The Port is extremely fortunate to have four teams highly qualified and dedicated to restoring the Ferry Building. The Commission determined that all four respondents met the qualification requirements and invited all four respondents to submit proposals for the rehabilitation and lease of the Ferry Building.

The four respondents presented their proposals to the Commission on September 22, 1998, at which time public comments were also received. Port staff and Keyser Marston Associates (KMA) later asked additional questions of the respondents to clarify various aspects of their proposals, both in writing and in meetings with each respondent. Port staff and KMA reviewed these submittals, including reference checks of the respondents and a review of the financial capacity of each respondent. KMA prepared an evaluation and ranking of the four proposals which was provided to Port staff and factored into the analysis. KPMG Peat Marwick LLP has reviewed the RFQ/P process used by the Port and KMA to evaluate the thoroughness, objectivity and independence of the process. KPMG concluded that the developer proposal evaluation and selection process was carried out in a thorough, objective and independent manner.

Attachments to the staff's report provide additional information on each of the developer's response identifying: (1) the developer entities and financing; (2) the developer's previous projects; (3) the development teams; (4) the general concept for development; and (5) summary tables prepared by KMA including the proposals, program summary, tenant rents/tenant allowance, comparison of development costs and Port rent comparisons.

In the RFQ/P, staff laid out the criteria with which the proposals were evaluated. In the qualifications phase, they identified 12 qualifications listed in page 3 and 4 of the staff report.

In the proposal phase, staff identified the following factors that will be used in evaluating the proposals:

1. Qualifications
2. Development concept
3. Economic proposal
4. Feasibility of the project
5. Understanding and demonstrated ability to obtain key approvals in a complex regulatory environment.

They analyzed the developers' responses and all written materials in accordance with the identified selection criteria. They analyzed the property management and leasing experience, development experience, commercial real estate leasing and management experience, project personnel experience and design team experience.

They analyzed the funding proposals from each team with respect to the amount and source of debt and proposed equity. They analyzed the development concept with respect to design and development guidelines that Port staff in conjunction with the State Historic Preservation Office and the Landmarks Preservation Advisory Board developed regarding development and reuse of the Ferry Building.

They evaluated the four proposals with respect to responsiveness to the objectives laid out in the RFP with regard to the financial objectives, maintaining the current income generated from the building as well as allowing the Port to participate in the physical design objectives as detailed in the Development & Design Guidelines and the planning and land use objectives from the Waterfront Land Use Plan. They analyzed the financial structure of each proposals for prospective base rent, cost of living adjustments to the base rent, Port participation in future increased revenues, projected total Port rent payments, relocation payments, protection from construction and operational risk, income during construction, effect of increased construction costs, effect of increased market rents and lease term. They also evaluated the construction schedule.

Based on that process, Port staff evaluated and ranked the respondents against the RFQ/P selection criteria taking into consideration the KMA evaluation and the selection panel who evaluated the qualifications. Madison/Myers and William Wilson ranked highest based on the equal weighting of the five selection criteria. Followed by TrizecHahn and Mentmore/Mills. The staff report detailed the key points that went into the evaluation and ranking. Madison/Myers and Wilson were highly responsive and both highly ranked. On balance, the Wilson proposal offers the Port and the City the best opportunity to successfully rehabilitate the Ferry Building and meet the goals set out in the RFQ/P. The following factors highlight the basis for staff's recommendation:

(1) Wilson has ample financial resources and is willing to commit substantial equity (40% or more) to the project.
(2) Wilson is a strong locally based developer with a recognized leadership position in the office market. Port staff believes that Wilson's combination of

strong local experience in the office market and retail experience at the Flood Building and elsewhere are very strong. Specifically their role in the Gap Headquarters Building and William Wilson's personal experience with the Francisco Bay Office Park on Port property are the most applicable office experience of any team. The Flood Building is a very successful historic rehabilitation of a landmark building, of similar materials and the same era as the Ferry Building, with a mixed-use program similar to that of the Ferry Building.

(3) Wilson's development concept proposes a very public-oriented ground floor, with a grand central space extending from the north to the south ends of the building. Their proposed public market would be diverse and representative of the Bay Area, supported by incubator shop space made available to local entrepreneurs at below market rents.

(4) Wilson's concept includes a grand galleria, opening from the ground floor through the second floor to allow visitors to see into historic upper Nave Bay of the Ferry Building and to its skylit roof. Wilson proposes to restore the Nave Bay at the second and third floor levels for the full length of the building, recreating where necessary the historic wall, window and ceiling materials, and offers the greatest opportunity to restore the full Nave Bay a prominent public space. This is most responsive to the Port's guidelines encouraging further opening and restoration of the Nave Bay. They propose the largest amount (over 50,000 sq.ft.) and the highest percentage (19%) of building area devoted to public, non-revenue uses.

(5) Wilson's economic proposal rates highly both on project feasibility and projected rent payments.

Mr. Osmundson introduced Richard Springwater and Chris Meany of Wilson & Associates.

Commissioner McCarthy thanked Paul Osmundson and his staff for all their efforts and hard work.

Karl Limbach, of Limbach & Limbach, indicated that their firm has been a long-time tenant of the Ferry Building. He mentioned that William Wilson is their landlord at their San Jose office and they are confident that they would be able to work with them in the Ferry Building.

Carolyn Garrety read the following statement from Carol Cresci, President of Colbert Electric, "As a local women contractor, it has come to my attention that there is the possibility of this proposal being awarded to any developer who has not actively recruited WBE and MBEs to be a part of the team. Good faith effort statements do not make the grade, Mentmore/Mills is the only developer to date who has recruited MBEs and WBEs. I hope this Commission will seriously consider only those proposals inclusive of MBEs and WBEs."

Jack Myers, chairman of Myers Development Company, spoke on behalf of

Madison Marquette/Myers/Cousins team. He acknowledged that their team enjoyed participating in the RFP process and felt that the process was comprehensive and conducted in a professional manner. As a follow up to the staff report submitted to the Commission, they have also submitted a letter to the Commission expressing their thoughts and concerns. He congratulated the Wilson & Associates team.

James Flood, owner of the Flood Building, supported and recommended the William Wilson proposal. They renovated the Flood Building in 1990. Chris Meany was the project manager and did a superb job. He delivered everything he promised. Knowing Mr. Wilson for a number of years, Mr. Flood believes that he will deliver whatever he promises. He knows that they won't overreach; they will promise what's real and what works as they have done on the Flood Building.

John Mark Sauve, World Trade Club, indicated that the World Trade Club has been a long-time tenant of the Port and expressed his thanks to Port staff for briefing them on the Port's intentions of this project. He indicated that Mr. Osmundson made a presentation to their lease committee. Mr. Sauve expressed their concern in the preservation of their position in this building as well as their member's satisfaction and support of international trade and travel and the maintenance of their scholarship student career symposium programs. They are aware that negotiations require them to be flexible but based on what they have seen, only one proposer has presented a written plan that includes the World Trade Club. While they are anxious to work with the selected bidder, they asked that any negotiations between the Port and the bidder include the World Trade Club as a preferred tenant in this building.

Michael Levin expressed his concerns about the rehabilitation of the Ferry Building. He read a letter he's written in October 1982 in response of the Ferry Building Complex EIR which was done for the Continental Development Corporation proposal, "Certain features of the proposed modifications of the Ferry Building appear to be unjustifiable in view of the historic nature of the building as great prominence including closing off of the southern city side arcade with glass instead of leaving it open and reopening the northern arcade to create additional enclosed space; also removal of most of the original second floor and the associated creation of a ground floor atrium and galleria at the expense of the restoration of the original second floor nave." He was disappointed when the Continental Development Corporation's scheme and proposal were approved by City agencies but was uplifted when that proposal fell through. Mr. Levin emphasized that he would like the building restored to its former glory as much as possible. He does not want history lost in the process. Wilson & Associates proposal looks the same as the proposal advanced by Continental development 16 years ago. The average visitor of the Ferry Building is not aware of its history. The second floor nave is historic. He feels betrayed and dismayed if the Commission moves forward and vote for the Wilson proposal without questioning if more history could be preserved. At least half of the second floor could remain the way it is.

Bruce Judd, principal of Architectural Resources Group, indicated that he was involved in writing the original design guidelines of the Ferry Building and he was part of the Polshek team that revised the guidelines for feasibility studies. Since then, they decided not to be involved in the proposal because they want to be involved in the Mentmore/Mills team. As a proponent, he was worried not only about the selection but also from the historic preservation perspective, the removal of the second floor. It bothered him that the problems that follow from the removal of the second floor were not addressed in the staff report. The building is going to have a lot of problems with the development in terms of CEQA and Section 106 requirements and, as a result, may involve several years of delay. He hoped that the Commission delays the process and investigates the historic preservation issues more fully. The Mentmore/Mills team meets all the standards as they have worked very hard over the past year. They have designed the addition on the fourth floor to be removable as well as that of the addition on the side of the building and can be removed without disturbing any fabric. They plan on opening up the building, not just the ground floor but the entire building for the public to see and use.

Mark Gleason, officer of Local 665 representing parking workers and other automotive service workers in San Francisco, supported Mentmore/Mills who made a commitment to parking workers. Mentmore has made a commitment to all unions.

Ed Dion, officer of Local 665, indicated that they, as well as many locals, are strongly in support of the Mentmore team. They believe they have strong leadership and strong commitment to labor. Organized labor has some concerns in this building as well as the finished project.

Jane Morrison indicated that many citizens and environmentalist would like to see the rehabilitation of the Ferry Building. The primary function must be for ferryboat commuters and other transit. The building must expand its role as a transit hub and no development should get in its way. Everyone loves the building therefore its historical structure must be preserved. It is very important that the public floors attract visits from everyone, which means that a variety of attractions and services should exist to draw people into the building. A single attraction such as food, restaurants, meat and produce market will attract people occasionally but they would not provide the variety that will bring people in each day. Historical museums and displays are needed. This is transit-first City. Traffic congestion is already a big problem all over the City. The Ferry Building should not be used to attract more cars. She hoped that any developer the Commission selects would be prepared to address these concerns.

Helen Bautista, International Children's Art Museum, congratulated the new Commissioners, Mr. McWilliams and Mr. Lee. She hoped that the Commissioners will ensure that this is a citizens-oriented Commission. Mentmore team is the only developer who included them in their proposal. They were informed through a

telephone conversation that the other developers could not afford to have the Children's Art Museum in the building because it cannot afford the rent. The Museum is a part of the Ferry Buidling's history. The City has a responsibility to ensure that the children have a place in the Ferry Building. She requested the Commission to reconsider and look very closely at the proposals. She indicated that the Port will be blossoming in the near future and that money should not be the end of the Commission's decision making process. She hoped that the Museum would be able to stay in the building.

Shelley Bradford-Bell, member of the Mentmore team, indicated that their team reflects San Francisco's diversity. Mentmore is the only team that pulled nearly 20 minority/women owned businesses together to be part of the planning, design and vision of the project. They have also pulled together businesses that are predominantly in the San Francisco Bay which reflects the vision for the City to empower the small businesses and women owned businesses with economic opportunity. This kind of diversity is evidenced from the beginning and to the tenant that will lease the property. It is important that the first floor is filled with tenants who are going to be able to succeed and not compete against each other. They have a plan that is fairly designed for a successful balance and opportunity. They will have a welfare-to-work system to ensure that people don't fall through the gaps. They want to ensure that jobs are secure, that minority and women owned businesses have the opportunity to thrive in this City and that this historic building is restored and that all of San Francisco has the opportunity in the 21st century.

Bob Mendelsohn, Mentmore Development, indicated that as a public board, the Commission relies on staff. From their point of view, staff's analysis is incorrect in its conclusions, particularly in the unsupported comments with regard to the major elements of their proposal. They would like the opportunity to respond in writing to the staff's recommendation. They have the highest economic proposal to the Port. He believed that they have been penalized because they chose not to devote the entire ground floor to food use. He believed that there is a serious interest on the consultants to the staff. They have come up with a proposal that utilizes the building in a way that preserves the extraordinary historic content but still provide a substantial amount of usable square feet that enable them to produce the best economic proposal to the Port. They are distressed and somewhat surprised to learn that the basis for their economic proposal has been called to question because the consultants did not like their construction costs. Morse Diesel, following 14 months of study, did their construction costs. Their analysis was based on a careful and in-depth understanding of the structural foundations of the project. This is a project of 300,000 usable sq. ft. at a cost of under $58 million. They resent the fact that an outside financial analyst decides that the construction cost is wrong. If they have the opportunity, they would like to have an in-depth written response to staff's recommendation.

Ernestine Weiss, resident of the Golden Gateway Complex, concurred with Mr. Mendelsohn's comments about the Morse Diesel Company. They are a huge

construction firm, the finest in the business and well respected. She supported Mentmore's proposal because the team has the best economic proposal. She asked the Commission to reconsider staff's recommendation.

Commissioner Hardeman described the process and the extensive meetings they have had in the past. Staff is a reflection of people that the Commission hires and gives control to do the work for the Port. A couple of the speakers alluded to fact that the staff is not doing their job but he emphasized that the Commission hires and listens to staff. The process was complex and there were a lot of meetings held. This was a four-horse photo finish and right down to the wire. The Port is extremely lucky to have four highly qualified proposers and the Commission was very impressed with the proposals. It was a difficult decision and the final analysis was recommended. He thanked all the teams for their efforts and their proposals.

Commissioner McCarthy also thanked the four developers for their outstanding proposals. She indicated that this was clearly the most difficult decision the Commission has to make, as it is clearly the most complex project thus far. They have spent numerous hours and attended numerous meetings. They listened to staff but they were all on their own. The Commission did a lot of reading and analysis as much as they could. They certainly relied on both the consultant and staff's input. She hoped that the proposers will continue to do projects with the Port.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. Four of the Commissioners were in favor; Commissioner McWilliams cast the dissenting vote. Resolution No. 98-114 was adopted.

B. Informational presentation on the proposed design for the development of Pier One.

Mr. Kirk Bennett, Manager of Waterfront Development Projects, indicated that this is an informational presentation to provide an overview and status report on the proposed design for the development of Pier One. The RFQ/I was issued in January 1998. In May 1998, an exclusive right to negotiate was awarded to AMB Property Corporation by the Commission. AMB has completed its due diligence. AMB has initiated the CEQA review and required government approvals and have refined their design plans. Staff is now negotiating the final terms of the development agreement, the lease and the sublease. Staff expects to present the project and transactions to the Commission for certification and approval in January 1999.

Janice Thatcher, project manager for AMB, indicated that the proposed design has been refined. She thanked Port staff, particularly Kirk Bennett and Alec Bash, for helping them through the design development process.

On behalf of her team, Ms. Cathy Simon also thanked Port staff for their efforts and assistance during the approval process. Ms. Simon indicated that her team has been working on the project for several months. In its current configuration, people

could not walk around the south side of Pier One. One of the most important features of this project is creating public access from Embarcadero, along the south side of the building, around the building and in the north side. The building was built as a warehouse and the railroad track came through the front of the building and along the south side of the building. Because of security reasons, the warehouse was built as a closed building, with the exception of the bulkhead that had offices. All of the windows were translucent glass and the building had big roll-up doors.

Ms. Simon indicated that as a future office building for the Port and AMB's headquarters, it is important to make the building more gregarious and have windows that you can see in and out of because of the spectacular views. The building is about 730 feet long and has approximately 85,000 sq.ft. A mezzanine will be added which will increase the square footage to approximately 140,000. A lot of people do not know where to find the Port, as the Port does not have a public face. This project would give the Port a public face so that people can find it. They will maintain the curve access way as a public access to the building. They are going to keep the tracks and raise them up but allow the public to come along the great opening to see the beautiful view of the Bay Bridge. The Port conference room will be situated along the south side of the building and could be available for public meeting rooms. Pier One Deli will be maintained as well as the entire historic fabric of the front but the arch of the bulkhead building will be replaced with glass.

Ms. Simon mentioned that in their investigation, they have found the underwater piers and pilings in very good shape. They, however, need to perform seismic work on the building both underwater and above ground. The building is a steel frame building with a concrete shell. The intend to make this a living vital place on the waterfront with an invitation to people from the Bay Area to visit the Embarcadero and experience how wonderful it is to be 730 feet out of the water.

Commissioner Lee inquired if they have any plans for a roof garden. Ms. Simon indicated that it is a wonderful idea however, the roof of the building does not have enough strength and was not built to accommodate people because it is a slanted roof. Although there will be Class A office spaces inside the building; it will be maintained as an industrial artifact. The building was very well and economically built.

Mr. Dan Cheetham mentioned that Port staff will enter through the main archway and will occupy the front end of the pier. Another tenant will occupy the middle space and AMB occupies the end of the pier. The inside of the shed space is a very open plan. There are second floors on either side of the central bay. The central bay is left open because it is one of the most important historic and architectural features of the building. It will be a very dynamic space with skylights and clear story lights. Ms. Simon indicated that the idea is to allow natural light to come in the building. They hope to introduce some skylights as well. Mr. Cheetham

indicated that one of the other interesting features of the building is the passenger gallery, which sits at a higher level than the new second floor. At the south apron, they plan to build a new deck on top of the new apron with a railing that marries up the level with the inside of the space so there will be a continuous public space all around the pier. Ms. Simon mentioned their idea of having a sustainable building, which means an energy-conserving building. They also have an interesting system proposed for the heating/cooling of the building, which is to use the energy of the coldness of the bay to heat and cool the building. It won't affect the bay but to use the energy of the bay to heat and cool the building is an innovative idea and one that is exciting for the Port. They are keeping the roll up doors in place but rolled up and replacing them with big windows. Mr. Cheetham indicated that Port staff would occupy the second floor of the bulkhead building.

3. EXECUTIVE

A. Amending San Francisco Harbor Code Article 13, Section 100, to authorize non-commercial outdoor signs and advertisement on waterborne vessels within Port jurisdiction under limited circumstances, and revise and clarify prohibition of other types of outdoor signs and advertisement on waterborne vessels within Port jurisdiction. (Resolution No. 98-113)

Noreen Ambrose, Port's General Counsel, indicated that the Commission was provided a copy of the draft resolution that would amend Harbor Code regulations, which the Commission previously adopted to regulate advertising and signage on vessels in the Bay. The Port was recently contacted by Rupert Hansen, the attorney for California Outdoor Advertising, and advised of legal objections to the regulation. The City Attorney's office reviewed the regulation and consulted with Port staff. Upon reviewing the regulation, information presented to the Port Commission at the time of initial adoption, letters to BCDC regarding a similar regulation, and the material presented by Mr. Hansen, the City Attorney's office recommended amendments to the regulation that would clarify the definitions, eliminate a limitation regarding signs on sailboats, and allow non-commercial signage in all instances where commercial signage would otherwise be allowed. Mr. Hansen requested consideration of additional amendments that would permit his client to pursue his business interest. Port staff is concerned about the adverse impacts of general advertising on visual aesthetics, pedestrian and motor vehicle safety and the potential for proliferation of general advertising on the Bay, and would not recommend further exceptions to the regulation. Ms. Ambrose indicated that attached to the Commission's package are letters from the Peace Navy and ACLU that were presented to BCDC addressing the need for opportunity for non-commercial speech as well as letters from concerned individuals regarding sailboat racing. Also included is a letter from San Francisco Beautiful supporting the efforts to reduce the proliferation of signs and general advertising on the bay as it relates to the visual aesthetics of the bay.

Jonathan Smith, speaking on behalf Will Travis - the Executive Director of BCDC, indicated that Mr. Travis strongly supports the efforts of the Port to prevent floating billboards and other foreign visual blight along the Embarcadero. Such activities are unattractive and interfere with the public use and enjoyment of the waterfront and the bay and presents potential safety hazards. Many San Franciscans and visitors of the Bay Area revere the bay as others feel about Yosemite, the Grand Canyon, etc. Floating billboards ought not to have any place in such locations and its entirely appropriate for the Port to use its authority to prevent those uses. Mr. Travis also agrees with the changes proposed by the resolution before the Commission.

Mr. Rupert Hansen, California Outdoor Advertising Attorney, thanked the Commission and the City Attorney for listening to their concerns about Section 100 and the problems they've had and believed that some progress have been made to resolving some of the free speech issues. They have just received and reviewed a copy of the proposed resolution and he offered his comments. The provision does expand the amount of non-commercial speech. The difficulty they have with the statute is it is a content-based statute because it contains exceptions of allowed commercial speech vs. disallowed commercial speech. The distinction between what is allowed and what is not allowed has to do with whether or not the vessel has sails or automotive power. They believe that the provision is vague as written because one cannot tell whether one can have rhetorical speech. The City has to exercise its discretion to determine whether or not the statute is being violated. Whenever a statute that restricts a speech commercial or non-commercial proposes discretion and City decides that it has a chilling effect on the citizens who seek to exercise their right of free speech. He urged the Commission to have staff reexamine the statute as proposed to remove the content-base aspect and make it a time, place and manner restriction that makes sense and he offered to interface with staff or the Port's General Counsel on this matter. He asked the Commission about the status of Section 100 as it was his understanding that it is not being enforced at the present time.

Noreen Ambrose recommended that the Port not enforce the existing regulation until such time that it is commended and approved by the Board of Supervisors. Because of the California Outdoor Advertising has prepared a preliminary injunction and staff believes that issues exist with respect to non-commercial speech, it would be preferable if the Commission does not enforce the regulation until it is affirmed by the Board of Supervisors. Commissioner McCarthy asked if it is being enforced now. Ms. Ambrose replied that for the last few days, staff is asking that it be not enforced until the Board of Supervisors affirms it.

Commissioner McWilliams inquired if a vessel that is propelled by its own power would be looked at differently. Ms. Ambrose clarified that the regulation prohibits general advertising on any vessel. General advertising is defined as a sign that directs attention to a business that is not occurring on the object on which the

advertisement is placed. A motorized ferryboat that has a sign, "Ride the ferry," would be permitted under this regulation. But if the sign reads, "Drink Coca-Cola," it would be advertising something that is offsite and would not be permitted. There is a practice that is prevalent for fundraising for sailboat races that involves corporate sponsorship or offsite advertising. There is an exception from the general rule for sailboat whether it is on the hull or on the sail. The general definition of a sailboat is any watercraft designed to be capable of being propelled solely by wind power. This is the distinction that allows general advertising on a sailboat but would not allow general advertising on a motorized boat or a barge being pulled by a tug.

Commissioner McCarthy asked if a motorized ship that has a sign that may say, "Toyota" would fall into the same category. Ms. Ambrose replied that the business sign would direct attention to the activity that is being conducted by that ship and therefore, covered under the "business" regulation.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor. Resolution No. 98-113 was adopted.

4. NEW BUSINESS / PUBLIC COMMENT

5. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 5:40 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Pier One
Person Negotiating: Port of San Francisco: Kirk Bennett, Manager Waterfront Development Projects
AMB Property Corporation: Janice Thatcher*

b. Property: Piers 90-92, 94-96
Person Negotiating
Port of San Francisco: Larry Florin, Director, Special Projects and Mark Lozovoy, Senior Property Manager

c. Property: Pier 80
Person Negotiating
Port of San Francisco: Philip Smith, Director of Real Estate
RMC Lonestar: Eric Woodhouse, Executive Vice President*

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

b. Discuss existing litigation matter pursuant to subdivision (a) of the California Government Code Section 54956.9 (one case).

- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.

6. RECONVENE IN OPEN SESSION

At 7:30 p.m., Commissioners McCarthy, Brandon, Hardeman, McWilliams and Lee returned from executive session and convened in public session.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in the executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:30 p.m.

discussed at length the several trends in the cruise industry that the Port considered in planning for a new or redesigned cruise terminal in San Francisco.

The following requirements for a modern cruise terminal have been identified based primarily on cruise industry trends:

1. Berths: two berths of at least 1,000 feet in length and 35 feet in depth, preferably that require little or no dredging and at least one of which is oriented parallel to the shore to provide for more efficient docking and operation.

2. Dockside facilities: minimum 50 foot wide aprons, direct street access for service vehicles, flexible and modern gangways to service two ships simultaneously.

3. Terminal building: a two-story, 80,000 sq. ft. terminal building (gross floor area) to house comfortable and attractive passenger check-in and waiting lounge areas, U.S. Customs processing areas, baggage check, visitor information services, etc.

4. Security: an isolated and securable security zone meeting the U.S. Coast Guard's requirements.

5. Vehicular Circulation: passenger drop-off and pick-up areas for buses, taxis and limousines, etc.

6. Mixed use development: space for major revenue-generating mixed use commercial development immediately adjacent to or near the terminal to help support the cost of the terminal and enliven the terminal when ships are not in port.

7. Public Access and Open Space: ample space for public access and open space, including a bon voyage area.

8. Accessibility to attractions and airport: proximity or easy access to local and regional attractions and the Airport.

Ms. Cook concluded that Pier 30-32 meets nearly all of the requirements for a modern cruise terminal. Ms. Cook enumerated the benefits and opportunities associated with a terminal development at this site:

- The main berth on the east face is 40 feet deep, requires no dredging and is parallel to the shore, making it the easiest berth at which to dock a cruise ship.

- The large, rectangular shape of the pier, and the lack of existing structures on the site, will allow for an efficient layout that meets the industry standards for dockside facilities, a terminal building with security, on-pier vehicular circulation

and public access and open space.

- The availability of Seawall Lot 330 for a mixed-use development, along with the potential for other commercial uses on the pier itself, make Pier 30-32 the most developable site from an economic and land use perspective.

- The site is in the heart of a burgeoning and vibrant mixed-use neighborhood that will put passengers within walking distance to Pacific Bell Park and the Pavilion Building, South Beach, the planned Mission Bay entertainment complex, the Financial District and the Ferry Building.

- Pier 30-32 has the best access to the Airport via two freeways, and has excellent access to major tourist attractions via bus lines, light rail.

- The views to and from the ships as they sail under two bridges and along the entire length of San Francisco's waterfront will be breathtaking.

- The absence of historical buildings on the site lessens the complexity and time associated with planning for and developing a major cruise terminal project.

- Developing the cruise terminal at Pier 30-32 would allow a recreational pier development or other uses to be pursued at Pier 27-29, which could uniquely utilize the existing 220,000 square foot clear span building at Pier 27.

While Pier 30-32 is the best location of the three alternatives studied, a few constraints must be taken into consideration when planning for a new terminal development at the site. The following list identifies those constraints:

- Pier extensions are needed.

Pier extensions are needed to the east and south berths to accommodate the increasing lengths of cruise ships. However, staff believes that the advantage of having at least one berth parallel to shore and not require any dredging at that berth is greater than the disadvantage of having to construct the extensions. Pier 30-32, while requiring an upfront capital investment for the extensions, will be safer and more cost-effective in the long run. It should be noted that extensions would also probably be required at Pier 27-29.

- The south berth will require maintenance dredging.

The south berth is currently 23 feet deep and requires dredging to accommodate incoming cruise ships. However, Pier 27-29 also would require regular dredging to maintain the recommended water depth. Fortunately, dredging at Pier 30-32 should be considered by BCDC as maintenance dredging rather than new dredging, saving the Port considerable time and money. New dredging, unlike maintenance dredging, would require lengthy & costly environmental review and upland disposal.

- Currently, there is no direct access to tourist attractions in the Northern Waterfront.

Port staff understands the importance of having easy and direct access to Fisherman's Wharf from the cruise terminal, wherever it is located. While Pier 30-32 is farther from the Northern Waterfront than Pier 27-29, a number of factors assuage this significant concern.

Rail tracks are currently being laid as part of the Mid-Embarcadero Roadway Improvement Project to eventually create a direct link via rail between the Southern and Northern Waterfronts. While the current MUNI operating budget does not provide funds for its operation, there is strong potential for the direct link to be funded when enough demand is established. With Pacific Bell Park, Mission Bay, and possibly a new cruise terminal, the demand for this direct link will increase considerably.

To get cruise passengers from Pier 30/32 to major tourist destinations, including but not limited to Fisherman's Wharf, a comprehensive bus and/or shuttle system should be studied as part of the new cruise terminal development. Staff research conducted on cruise terminals in Vancouver, Seattle, Miami, Tampa, and Boston indicates that all but Seattle have major tourist destinations beyond walking distance from the terminal. To access these attractions, passengers primarily use shuttle or charter buses that leave directly from the terminal. Information booths direct passengers to the appropriate buses, and ticket sales are often prearranged through tour packages offered by cruise lines. Representatives from these Ports stated that shuttle buses work well in efficiently bringing passengers to their destinations of choice.

Finally, the area-surrounding Pier 30-32 is becoming a destination in its own right. The major developments underway in this vibrant mixed-use community, including the Ballpark and Mission Bay, will ensure exciting attractions for cruise passengers and other visitors to the City's waterfront. Indeed, one of San Francisco's greatest strengths is its abundant and diverse tourist attractions beyond the traditional destinations.

- **Seismic upgrades are needed.**

Pier 30-32 must be upgraded to improve seismic safety as part of any development program, whether or not a new terminal is built there. If a new terminal is not built, an alternative development project at that location, regardless of its type, would still necessitate seismic improvements. Thus, the need for seismic upgrades does not necessarily preclude or slow down a development opportunity on the pier. Furthermore, repairs are also needed on Pier 29's substructure and seawall, and additional improvements may still be needed on Pier 27.

Eleven people gave public testimony at the Port Commission public hearing on

September 8th. The speakers included representatives from the Metropolitan Stevedore Company, which operates the existing terminal at Pier 35, the marine and travel industries, the Bar Pilots' Association, residential groups, an architectural firm and the Embarcadero Cultural Center International. The speakers were in general agreement that the existing terminal at Pier 35 is not adequate and a new cruise terminal is needed in San Francisco. Seven of the speakers endorsed Pier 30-32 as the preferred site alternative, one supported Pier 27-29, and three did not make a specific endorsement.

The general arguments in favor of Pier 30-32 are that it can accommodate a "world class terminal" befitting of San Francisco's stature, it is closer to the Airport, major developments are making South Beach an increasingly attractive community, new jobs and business opportunities would be created (including for at-risk youth), and it has the potential to provide hotel accommodations and services on the adjacent seawall lot. Pier 27-29 was endorsed by one speaker due to its proximity to tourist attractions.

Representatives from residential groups expressed concerns over traffic, parking, and the need to establish a "good neighbor policy" in connection with a terminal development at Pier 30-32. Another speaker recommended that the Port take into consideration the needs of elderly people when designing the new terminal.

In a letter to the Port, the South Beach Citizens Advisory Committee expressed specific concerns related to traffic and parking issues, the potential height of a hotel development on Seawall Lot 330, the potential for retail shops like those found at Fisherman's Wharf, and the need for an equally thorough analysis of Pier 27-29 and Pier 30-32.

The Port intends to address traffic issues and other project impacts through environmental review of the project. Height concerns will be addressed through development standards devised with the help of the community itself, and through development and design parameters set forth in the developer Request for Proposals. Furthermore, height and design concerns will be addressed through joint design review between the City and the Port. Port staff agrees that the type of retail development found at Fisherman's Wharf would not be appropriate for a cruise terminal development at Pier 30-32 and Seawall Lot 330. Finally, Port staff believes that the analysis conducted to date has provided the information necessary to make the decision regarding which site to pursue for the cruise terminal, while acknowledging that additional planning and investigation is needed as part of preparing the RFP, as well as through the environmental review process.

Following public testimony at the September 8th public meeting, the Port Commission instructed staff to come back with a recommendation for a preferred site based on further analysis of the following issues: cost and cost effectiveness, choices for an synergy of other uses in addition to the terminal, transportation access, public access, vehicular access, probability of success of the alternative sites and recommendation

for a flexible process.

- **Cost and Cost Effectiveness**

Dredging at Pier 27-29 will initially cost approximately $2.68 million and subsequent biannual dredging would cost approximately $1 million. Initial dredging at Pier 30-32 would cost approximately $1.25 million and biannual dredging would cost about $500,000. Pier 30-32 is the preferred location when considering dredging costs. Staff believes that Pier 30-32 would most likely be the more cost effective location of the two due to the large, vacant seawall lot that is available directly across the site for a revenue-generating development. Detailed cost estimates for the entire project at Pier 30-32 will be forthcoming as part of the pre-development process for the site.

- **Choices for and Synergy of Other Uses**

The Waterfront Land Use Plan designates acceptable land uses for Piers 27-29, 30-32, and Seawall Lot 330. Acceptable uses on Pier 27-29 include Cargo Services, Ferry and Excursion Boats, Historic Ships, Maritime Office, Maritime Support Services, Passenger Cruise Ships, Temporary and Ceremonial Berthing, Water Taxis, Open Space, Public Access, Assembly and Entertainment, General Office (except in bulkhead buildings fronting The Embarcadero), Museums, Retail (includes restaurants), Recreational Enterprises, Wholesale Trade/Promotion Center, and Community Facilities. Acceptable uses on Pier 30-32 include Ferry and Excursion Boats, Historic Ships, Maritime Office, Maritime Support Services, Temporary and Ceremonial Berthing, Passenger Cruise Ships, Water Taxis, Open Space, Public Access, Assembly and Entertainment, Museums, Retail (includes restaurants), Recreational Enterprises, Visitor Services, Wholesale Trade/Promotion Center, and Community Facilities.

While many of the same uses are allowed on both sites (Piers 27-29 and 30-32), Pier 30-32 is unique in that the development program can include the adjacent 2.8 acre Seawall Lot 330. Acceptable land uses on Seawall Lot 330 include Residential, Assembly and Entertainment, Hotels, Parking, and Retail (includes restaurants). Redevelopment of the Seawall Lot in conjunction with the pier provides the opportunity to create a better synergy of uses between land and water-side development and an advantageous mix of uses that will activate the terminal year round.

Staff believes that the Pier 30-32 and Seawall Lot 330 sites together allow for a cohesive development that will include uses on both sides of The Embarcadero that complement each other and encourage people to cross to the water. This opportunity for a synergy of uses does not exist at Pier 27-29.

- **Transportation and Vehicular Access**

Further environmental review will likely be required for this project to analyze the

full scope of issues relating to transportation and vehicular access to and from a potential cruise terminal at Pier 30-32. Given the availability of multiple modes of transport to the facility, including light rail, buses, BART, ferries, the Bay Bridge and two freeways, a variety of recommended routes to and from the terminal would likely be identified. In addition, the combined size of Pier 30-32 and Seawall Lot 330 would offer adequate space to accommodate parking and waiting areas for autos, taxis, buses, and other vehicles bringing passengers to the facility. The feasibility of integrating a comprehensive bus and/or shuttle service as part of the cruise terminal development will also be considered.

- **Public Access and Open Space**

Both Piers 27-29 and 30-32 are large enough for adequate public access and open space areas. Pier 30-32 offers the added flexibility of planning for these areas from scratch in a residential community where they are especially needed.

For safety and security measures, U.S. Customs may limit the amount of public access and viewing areas allowed within and around the terminal. The terminal development program would accommodate these restrictions to ensure maximum public safety.

- **Probability of Success**

Time is of the essence in planning for a successful cruise terminal development at either Pier 30-32 or Pier 27-29. A new, modern cruise terminal development could take approximately three to four years to complete. With a strong economy and development climate, San Francisco should begin to develop and purse a terminal development program as early as possible

Unlike Pier 27-29, Pier 30-32 could accommodate revenue generating mixed-use development at Seawall Lot 330. Other Ports and cruise industry experts agree that Ports with seasonal markets should incorporate a mix of uses in their terminal developments in order to continuously activate the space, attract visitors to the waterfront and stimulate the local and regional economy throughout the year. A revenue generating mixed-use component would also help subsidize the development and ongoing operational costs of a cruise terminal development at Pier 30-32.

Building a terminal from scratch at Pier 30-32 would offer maximum flexibility in designing a development concept. Pier 27-29 would constrain the development concept due to the existing structures on the site and the lack of an adjacent seawall lot.

- **Proposed Process**

The proposed process for the cruise terminal development will include forming an Advisory Group made up of industry experts and community members, working with the South Beach Citizens Advisory Committee, working with consultants experienced in major cruise terminal development projects, and issuing a developer

Request for Proposals.

Staff recommends that the Port Commission direct staff to prepare a developer Request for Proposals for a mixed-use development at Pier 30-32 and Seawall Lot 330 that includes the new James R. Herman Cruise Ship Terminal as a major component of the project.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution 98-108 was adopted.

8. FINANCE & ADMINISTRATION

9. CONSENT CALENDAR

10. NEW BUSINESS / PUBLIC COMMENT

Mr. Anil Khetawat, Project Phoenix owner's representative, thanked the Commission for the opportunity to speak regarding their proposal for the Rincon Park Restaurant. He submitted a letter (attached) outlining their response to Port staff's recommendation for the restaurant development opportunity. Commissioner McCarthy indicated that Port staff will prepare a response to his letter.

Art Blum thanked the Commission and the Executive Director for the opportunity to present the Pan Pacific Exposition. Their consultant team consists of Bechtel, Economic Research Associates (ERA), KORVE Engineering and Paul Creighton. They have received letters from Universal Studios, Kodak, Mercedes Benz, Coca-Cola and United Airlines expressing their interest in participating in the Expo. The interest is surprising and monumental. He showed the Commission a copy of the "sizzle" book for the Expo. The Pacific Asia Travel Association is very keen on this exposition and would like to be involved. They believe that the Expo will be successful and this is the kind of event that will unify the City because it represents all the neighborhoods and all the ethnicities. They would like to have the Port with them as a partner.

Gordon Linden, Bechtel, indicated that they were very excited about this opportunity. Bechtel is active in the entertainment business and they are currently working on the Salt Lake Olympics. They have worked on the Barcelona Olympics and the 1984 Los Angeles Olympics. ERA is one the pre-eminent firms in the area of theme parks, visitor attractions and world fairs. KORVE Engineering is familiar with the Bay Area access and transportation. Paul Creighton has held management positions of all of the North American Expositions such as Seattle, Vancouver, and Spokane and has been working with Bechtel for the last 12 years. Their vision is an international exposition in San Francisco in the year 2002 to celebrate San Francisco's renaissance and promote Bay Area Trade and Tourism and to recognize the Port of San Francisco as gateway to San Francisco and the rest of the U.S. and California's achievements in technology, agriculture and transportation.

There have been more than 100 international expos, three in the Bay Area. There has not been one in the U.S. since 1984. The most recent in this region was the highly successful 1986 Expo in Vancouver. Paul Creighton was the assistant to the President of that exposition.

The proposed site for the proposed exposition would be a contiguous number of piers (Pier 27 through Pier 35, which is approximately 38 acres) in order to attract international interest and exhibitions. If needed, floating barges and floating structures will be used to add space. The existing pier buildings would be used as exhibition halls. They also expect gates on the water to accommodate water taxis. There will be a secondary gate located at Pier 39 and those would be temporary improvements. He emphasized that one of the great lessons of the 1984 L.A. Olympics was that all of the facilities were existing. There were only one or two things that were built new. They utilized the industry that is around for temporary events, concerts, scaffoldings, lighting and they created an environment that was temporary but was attractive and gained a lot of interest worldwide. The idea here is to develop a similar program of temporary outfitting on the piers. There would be food and beverage and merchandising. The expo would create an inviting, exciting temporary façade for the waterfront. The exposition can improve and enhance the image and awareness of the Port, international press and media coverage, site and facilities improvements, world trade center, interactive science center, sports facilities, exhibition space, etc.

Chi-Shin Shao, Vice President of KORVE Engineering, discussed the transportation analysis they performed. Their findings indicated that there will be a significant number of people coming to the event and there will be demand for transportation. Mr. Shao discussed the expected monthly attendance, arrival/departure pattern and arrivals to the Expo by mode. For a typical workday, the highest demand would be in the months of August and October. The weekend demand would be much higher than weekdays. There will be more parking spaces in the weekends to accommodate parking. The highest demand will not occur in the morning and will not overlap with the morning peak hours. It will occur between 10-11 and it will peak again, which will overlap with the afternoon commute hours and peaks again around 11-12 midnight. The expo site is within half a mile from the Ferry Building, where there is an excellent transportation. The goal is to get as many people to use public transportation. There will be parking demand 2500 spaces; possible sites for parking would be Piers 30-32 and Mission Bay. They estimate a 70-90 shuttle bus trips in the peak hour and charter bus operations of 220 one way trips. There will be mid-day and evening regional transit services, curbside drop off/pick-up activity, direct ferry service/water taxi service and time management. There will be management strategies to further reduce and spread the loads especially during the 5 p.m. commute hours. There will be special entertainment during that time period to attract people to stay at the expo and there will be free or discounted ticket to attract people to attend the expo via public transit.

Clive Jones indicated that they were concerned with the attendance and economics of the event since it is going to be a privately-financed exposition but San Francisco has the

attributes to make it work; it is a strong resident market and a strong tourist destination. San Francisco has a dramatic waterfront venue. There's very strong participation interest by potential exhibitors. There's also strong interest from the countries of the pacific region. They believe that the Pan Pacific Exposition is the right theme and there is a tremendous amount of entertainment they will bring to the exposition. Their pricing and marketing policies are such that they intend to make money and not necessarily maximize attendance. Access and egress are important. They have an available market of approximately 18 million and split relatively between the 9 million Bay Area residents and the 9 million tourists. They are projecting attendance of 7.74 million, 60% residents and 40% tourists. The site is designed to handle about 50,000 per day. The visitor spending total would be $266 million; half of which will be from admissions and the rest from food beverage and merchandise. They are limiting the amount of food and beverage and merchandise space because they will need to use as much as they can for exhibits, pavilions and attractions. The estimated cost to put on the event is $275 million; approximately $125 million will be produced by the organizer and the remaining $150 million will be from participants and concessionaires. They estimate that the economic impact and benefit to the City would be $421 million in additional tourist spending which leads to a total gain in regional output of $983 million. The expo will produce 3500 on-site jobs and 6890 new industry jobs.

Mr. Linden indicated that since the Port has everything in place and they don't need to clear all railroad yards, knock down buildings, assemble land, etc. they can easily shave off 18 months or less on the preparation schedule. The activity at the Port will be minimal. Their proposed schedule will be different from a typical world's fair. The Port has a tremendous asset, an infrastructure and set up that could handle the expo.

Paul Creighton indicated that the goal of world's fairs is to go out of business successfully. This would allow them to be very flexible in terms of how they can work with the Port and being sure that residual value remains because of the world-class exposition. Because they know today that they are going out of business successfully, they have the flexibility to accommodate what can be a very significant residual value from the City of San Francisco. Mr. Creighton indicated that he was excited about the fact that there is so much water available. Some of the significant things that have happened to world fairs particularly in Vancouver is there has been a tremendous increase in the state-of-the-art of using water as an entertainment. Fairs are fun, can be fun and should be fun to be successful. This is a golden opportunity and encouraged the Commission to move forward on this project.

David Jamison indicated that he is part of the principal group working on this project. He commented that past fairs have shown powerful linkage that exists between this kind of event and the long-range development and image of the location. Expo 2002 is an unparalleled opportunity to market the Port and to market it in a matter that supports both the long-range vision and the public direction for the Port. Expo 2002 is a marketing dream by combining everybody's favorite City with an event of worldwide significance. At the same time, we are creating an opportunity to showcase and highlight all the wonderful technological developments that exist in this area to give technology a chance to have a front seat and to help establish San Francisco as the seat of that technology. It is a

major media event worldwide, supported by major advertising, public relations campaigns and Port sponsorships that brought international coverage. Expo 2002 will showcase an affair to remember, a City to remember and a permanent gateway to United States.

Jim Gonzales, director of Pan Pacific Expo, indicated that as former member of the Board of Supervisors and chairman of the finance committee where there were deficits of hundreds of millions of dollars, they were able to solve them maintaining services and keeping the City on track. This is a City that many times have been called the City that knows how. He mentioned that the Democratic Convention in 1984 despite people's negative comments, the City was able to pull off the convention that delivered revenues, delivered multiplier effect for the hotels and delivered the economics due to the hard work of Commissioner Hardeman and the agreements made by labor, Mayor Feinstein and her administration, Deputy City Attorney Noreen Ambrose, and members of the different entrepreneurial community. Mr. Gonzales noted that he would not be before the Commission asking them to get involved in a party that is going to cost taxpayer's money. If someone has to be involved in a party, it should be one that does not cost you anything but rather create a lasting benefit to you and at the same time, hold the promoters accountable. To enter into exclusive right to negotiate would get this process moving forward. It is key that it happens now and it happens quickly. There is only a little window of opportunity. The Commission has seen the advantages that this expo would bring to the Port and the City. The small businesses are going to benefit as well as the multi-media industry. The Port will bring the City to the waterfront and holds people accountable. In the exclusive right to negotiate process, the Commission can put thresholds of earnest money that needs to be submitted, reaching financial goals of raising the money and everything that protects the interest of the City. They intend to meet those goals. The Port of San Francisco can now literally stand at the helm and come up with a world-class event for San Francisco, one that not only benefits the Port but also benefits all of San Francisco while at the same time have very few risk for the taxpayers. The Commission is in a position to weigh the risk and the benefits. There is always risk but he assured the Commission that the risks are moderate and can be overcome because the Port has a very capable team to handle a successful event. 3500 jobs will be created. This is an opportunity that comes once so often in decades and takes advantage of the new millennium, the new century and celebrates all the achievements of San Francisco. The team of Bechtel, KORVE Engineering and ERA is exceptional. The Mayor is the number one ambassador for San Francisco. Mr. Gonzales emphasized that they only have a limited amount of time and asked the Commission to have this exclusive right to negotiate at the next Commission meeting. Commissioner McCarthy directed staff to give their recommendation to the Commission on this matter.

Commissioner Lee inquired if it is possible to come up with some kind of resolution at the next meeting since this is an excellent opportunity. Commissioner McCarthy reiterated that staff will present their recommendation to the Commission.

The regular meeting was adjourned at 6:10 p.m.

ACTION: Commissioner Hardeman moved approval to return to executive session to continue their discussion on the executive session matters; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 7:10 p.m., Commissioners McCarthy, Brandon, Hardeman and Lee returned from executive session and convened in public session.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in executive session. Commissioner Lee seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:15 p.m.

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To: Name Douglas Wong

Company Port of San Francisco

Telephone (415) 274 0400

Fax (415) 274 · 0528

From: Name ANIL KHETAWAT

Company PHOENIX STUDIO

Telephone (415) 377-0153

Fax (415) 461-6997

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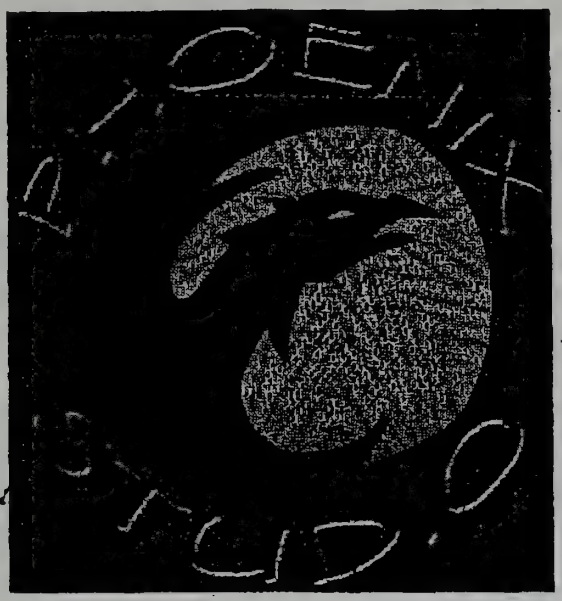

27 October 1998

VIA FACSIMILE& MAIL

Mr. Douglas Wong
Executive Director
Port of San Francisco
Ferry Terminal Building
San Francisco CA 94111

Dear Mr. Wong,

On September 30, the Project Phoenix Team submitted a proposal for the Restaurant Development Opportunity at Rincon Park. The proposal was prepared according to the guidelines outlined in the Port of San Francisco's "Request for Proposal" dated July 23rd.

We have since been notified by Port representatives that another respondent (Nice Ventures Inc.) to the RFP has been selected to enter into exclusive negotiations for the project with the Port. We are also in possession of the memorandum dated October 22nd outlining the rationale for selecting Nice Ventures Inc.'s proposal in preference to our own. We believe the rationale for the selection was flawed in three fundamental respects.

1. Some criteria were used to evaluate the two proposals that were not mentioned in the formal RFP.
2. Our proposal apparently scored poorly with respect to some criteria when the facts suggest a higher score was justified.
3. Aspects of the evaluation process were based on presumptions by Port staff in the absence of factual information.

In addition, the Port did not exercise its option during the evaluation process to invite our team to present its proposal to Port staff. Such a meeting would have enabled us to

Our specific concerns about the rationale used in the evaluation process (as described in the memo) are as follows:

Criterion A – Experience of Respondent's Team

Your Reference: "Nice Ventures Inc. team appears superior … have worked together on projects in San Francisco… proven track record with San Franciscan diners…."

Our Response: The RFP did not expressly indicate that a demonstrated track record on working together in San Francisco or a proven track record with San Franciscan diners were important selection criteria. Our proposal clearly demonstrated the ability of the Respondent's team to work quickly and effectively to deliver something new to San Franciscans.

Your Reference: "GPS Park Restaurant Inc, a subsidiary of the GAP….will have a major stake….ensuring a quality development."

Our Response: No where in the RFP is the nature of equity holders mentioned as a criterion. Port staff seems to have placed emphasis on this point. In addition, our proposal did not mention the fact that we had opened a dialogue with the Gap to discuss areas in which we might cooperate to jointly develop the area. This omission resulted from the fact that we thought it was irrelevant to the selection process.

Your Reference: "…by using the same landscape architect (Nice Ventures), the Port's objective of activating the Park presumably can be more easily attained."

Our Response: There is a presumption on the part of the Port that is inappropriate.

Your Reference: "Many of the major members of the Phoenix Team reside as far away as India and Australia."

Our Response: While it is true that a number of Phoenix members currently reside overseas, one owner's representative is currently living in San Francisco. Other key people would move to San Francisco if the proposal were accepted. In any case, the RFP did not mention that local residency was a requirement of selection criterion so we did not comment on the residency plans of Phoenix team members.

Criterion B – Experience of Restaurant Operator

Your Reference: "…key members of the (Nice Ventures Inc.) team …can be expected to remain involved in the restaurant for a longer period than the Phoenix proposal."

Our Response: This is a presumption on the part of the Port that has no factual basis. The RFP did not specify that length of involvement in the restaurant was a criterion. Moreover, the Project Phoenix restaurant operators (Neil Perry and Trish Richards) have an established track record of maintaining a strong involvement with and management of

their restaurants. They have agreed to take equity in the project and would bear significant personal losses if restaurant operations suffered as a result of them curtailing their involvement.

Criterion C – Restaurant Concept

Your Reference: "...while the Phoenix proposal is Asian inspired."

Our Response: Phoenix's cuisine choice is certainly Asian inspired but has been referred to as "Pan Pacific" cuisine in our proposal and hence is a more unique style.

Your Reference: "...(Nice Ventures Inc.) includes outdoor cooking and more focussed attention to the creation of an outdoor sense of place as well as significantly more seats."

Our Response: The RFP makes no mention of the need to create an outdoor sense of place. There is also an error in fact as Phoenix has provided 180 outdoor seats (not 120 as stated in the memorandum). Further, the memorandum later states that Port staff are concerned about the "intensity" of outdoor dining in the Nice Ventures proposal. In contrast, Phoenix has purposefully left some space to facilitate movement between the park and the restaurant to assist with the activation of the Park.

Your Reference: "Staff also believes....two smaller buildings, rather than one large facility that tries to be everything to all people is a better strategy for success."

Our Response: The RFP expressly states that the concept should appeal to a diversity of users. It is categorically wrong for the Port staff to say that the Phoenix proposal for one facility is trying to be everything to all people. There are four (4) clear concepts within the one building, with more than one access point, different menus, service styles and price points. It has been specifically designed to cater for the diversity of users.

Your Reference: "Phoenix proposal appears to better address the needs of Park frequenters.... Nice Ventures Inc. proposal does discuss the possibility of providing vendors....staff believe this idea can be pursued."

Our Response: Phoenix has clearly met the criterion whereas Nice Ventures Inc. has not. Yet, the Port staff have given Nice Venture Inc. the benefit of the doubt and will allow Nice Ventures Inc. to address this issue during the exclusive negotiation period.

Criterion D – Design and Engineering Consultants

Your Reference: "Furthermore, by selecting William Wilson.....(the project) should proceed more smoothly."

Our Response: No where does the RFP state that the credentials and experience of the construction manager are important criteria.

Criterion E – Conceptual Design for Improvements

Your Reference: "Nice Ventures Inc. proposal provides a more sophisticated approach to creating a sense of gathering place...."

Our Response: No where in the RFP states that creating a sense of gathering place is an important criteria.

Your Reference: "Staff is concerned about (Nice Ventures Inc.) restaurant relationship to the historic resources....In addition, staff is concerned that the intensity of landscaping....could preclude movement."

Our Response: The RFP clearly states "in particular, freedom of movement between the restaurant and the Park, sensitivity to and integration with adjacent historic properties ... (are important)." The Nice Ventures Inc. proposal has not met the RFP's criteria for conceptual design in this respect, at least partly because of the number of outdoor seats proposed. In contrast, the Phoenix proposal specifically facilitates freedom of movement between the restaurant and the Park, while the architectural design has taken into account the sensitivity and integration requirements with adjacent historic buildings.

Criterion F – Financial Capacity and Plan

Your Reference: "(In) the Phoenix proposal....liquidity of holdings is not clear."

Our Response: The RFP does not mention liquidity as a criterion. Instead, it states "the Respondent must be able to fund preliminary design....raise and commit capital for construction...." The Phoenix proposal clearly demonstrates the track record of the Khetawat family in being able to perform these exact requirements on numerous occasions. The family's assets were catalogued in the proposal only to provide concrete evidence of its net worth.

Your Reference: "Nice Ventures Inc. proposal relied primarily on debt financing of a magnitude that does not appear to have been sought previously."

Our Response: The RFP clearly states that "financial capacity" is a fundamental criterion which the Nice Ventures Inc. proposal does not meet without significant risk.

Your Reference: "(The) Nice Ventures Inc. proposal ...is the less speculative...has an outstanding local reputation..."

Our Response: This paragraph provides two clear examples of presumptions made by Port staff which is not supported by factual information. First, there is a presumption that the Nice Ventures Inc. proposal would have to raise significant debt finance simply because of the scale of this development. Secondly, the presumption that this proposal is less speculative. The Phoenix proposal is roughly 75:25 Equity: Debt whereas the Nice Ventures Inc. proposal is the reverse. Clearly the Phoenix proposal is more conservatively financed. In addition, the Nice Ventures Inc. proposal seems to be

significantly more speculative than the Phoenix proposal with respect to forecasted sales (see below).

Criterion G – Economic Return to the Port

Your Reference: "...the Nice Ventures, Inc. proposal would appear to provide less rental income.... Rent credits are far in excess of the Port Commission's customary policy."

Our Response: Economic return is to be based on Base Rent and Percentage Rent. Nevertheless, the Nice Ventures Inc request for rent credits reinforces the speculative nature of their proposal and is clearly in contravention of Port policy. In addition, as there is no economic analysis presented, the Nice Ventures Inc proposal only "appears" to offer a higher return. We suspect this higher return is based on the percentage rent proposal and the high sales forecast which the port itself flags as "optimistic" (see below).

Criterion H – Financial Viability

Your Reference: "Both proposals estimate a capital investment of $6-$8 million...Both include optimistic sales projections..."

Our Response: The conservative approach used by Phoenix in developing its financial forecasts is clearly evident as the "steady state" sales are **half** that of Nice Ventures. It is incorrect to say the Phoenix proposal is optimistic, particularly when compared with Nice Ventures Inc. sales estimates. Indeed, the Nice Ventures Inc. sales projections are contingent on having 600 outdoor seats, a fact that the Port has indicated is undesirable. In addition, the Phoenix proposal assumes lower capacity utilization for the outdoor tables by taking into account seasonal variation in demand for outdoor dining.

In light of the fact that parts of the evaluation were incorrect and based on criteria that were not communicated to the Phoenix team prior to proposal preparation, we ask the following:

- That you rescind staff's recommendation for the Port to enter into exclusive negotiations.
- That you re-evaluate the two proposals strictly according to the criteria outlined in the RFP.
- That you specifically exclude factors which you took into account in the first evaluation and which were extraneous to the RFP.

We recognize the difficulty of eliminating bias in any new evaluation (on the part of Port staff) who participated in the first evaluation. We are therefore willing to re-submit our proposal (including confidential portions) to a different evaluation team should the Port elect to form such a team. We are also willing to meet with Port representatives to clarify any questions they have about our proposal.

We have not yet referred our concerns to legal council, nor will we if we believe we can get a fair hearing from the Port.

We look forward to hearing from you about this most important matter at the earliest opportunity.

Yours sincerely

Anil Khetawat
Owner's Representative

CC: Hon. Denise McCarthy
Hon. Kimberly Brandon
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee
Mr. Paul Osmundson
Ms Anne Cook
Mr. Timothy L. Yoshida

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PORT OF SAN FRANCISCO

NOTICE OF CANCELLATION

THE REGULAR PORT COMMISSION MEETING SCHEDULED FOR
TUESDAY, DECEMBER 8, 1998 AT 4:00 P.M.
IS CANCELLED

♦♦♦♦♦♦♦♦

A SPECIAL PORT COMMISSION MEETING
IS SCHEDULED FOR

THURSDAY, DECEMBER 17, 1998 AT 3:00 P.M.

in the Port Commission Room
Suite 3100, Ferry Building
San Francisco, CA 94111
(415) 274-0406

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100. The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available.

The closest accessible BART and MUNI Metro station is Embarcadero located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142.

There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building. Assistive listening devices are available for use in the Port Commission Meeting. The following services are available on request 72 hours prior to the meeting: (1) American Sign Language Interpreters; (2) A Sound Enhancement System; (3) The use of a reader during the meeting and (4) copies of the agenda or minutes of the meeting in alternative formats. Please contact Kevin Jensen, the Port's ADA Coordinator at (415) 274-0555. Late requests will be honored if possible. Please contact the Commission Secretary at (415) 274-0406 should you require large print of the agenda.

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San Francisco Lobbyist Ordinance

Attention: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Admin. Code 16.520 – 16.534) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #701, San Francisco, CA 94102, phone (415) 554-9510 or fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/.

SAN FRANCISCO
PORT COMMISSION

SPECIAL MEETING – PLEASE NOTE THE DATE/TIME OF THE MEETING
→→→3:00 P.M., THURSDAY, DECEMBER 17, 1998←←←
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CA 94111

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AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - November 6, 1998 Special Meeting
   - November 10, 1998 Special Meeting
   - November 17, 1998 Special Meeting

3. **EXECUTIVE**

   A. Executive Director's Report

4. **MARITIME**

   A. Approval of the 5-year Marine Terminal Agreement with Mexican Line Limited at Pier 80 and authorize the Executive Director to seek approval by the San Francisco Board of Supervisors to amend the agreements to include a mutual indemnity clause. (Resolution No. 98-120)

5. **REAL ESTATE**

   A. Adoption of Negative Declaration and approval of Memorandum of Understanding with the Department of Public Transportation (MUNI) for all of Seawall Lot 354 located at the southeast corner of Marin Street and Indiana Street for use as a vehicle maintenance facility. (Resolution No. 98-121)

6. **FACILITIES & OPERATIONS**

   A. Approval to execute Contract Modification No. 3 for Construction Contract No. 2611, "Ferry Plaza and Piers 27 & 29, Earthquake Repair Project, Pile and Deck Repair" with San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipelines, a Joint Venture. (Resolution No. 98-116)

   B. Approval to advertise the Downtown Ferry Terminal project. (Resolution No. 98-117)

   C. Approval to advertise Contract No. 2656, "Hyde Street Harbor Waterside Facility and Public Access Improvements Project." (Resolution No. 98-118)

7. PLANNING & DEVELOPMENT

A. Consider and act on Mentmore/Mills Corporation's protest of the award of the Exclusive Right to Negotiate with Wilson & Associates for the rehabilitation and master lease of the Ferry Building for retail and office uses. (Note: Mills Corporation is not part of the formal complaint filed by Mentmore Development.) (Resolution No. 98-122)

B. Approval of the San Francisco Bay Trail in the Southern Waterfront through certain portions of Port of San Francisco jurisdiction. (Resolution No. 98-119)

8. FINANCE & ADMINISTRATION

A. Authorization to issue a Request for Proposals for a consultant to prepare an Economic Impact Report for the Port. (Resolution No. 98-115)

9. CONSENT CALENDAR

A. Adoption of the Ferry Building Leasing Parameters. (Resolution No. 98-123)

10. NEW BUSINESS / PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

11. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Triangle site at Seawall Lot 300/301
Person Negotiating:
Port of San Francisco: Douglas F. Wong, Executive Director
Alioto's: Nunzio Alioto*

An executive session has been calendared to discuss real estate negotiations between the Port and Alioto's regarding property located at Jefferson Street.

b. Property: Pier 80
Person Negotiating:
Port of San Francisco: Philip Smith, Director of Real Estate
RMC Lonestar: Eric Woodhouse, Executive Vice President*

An executive session has been calendared to discuss real estate negotiations between the Port and RMC Lonestar regarding Port property located Pier 80.

c. Property: Portions of Pier 48/Pier 50
Person Negotiating:
Port of San Francisco: Philip Smith, Director of Real Estate & Larry Florin, Director of Special Projects
Pan Pacific Expo: Art Blum*

An executive session has been calendared to discuss real estate negotiations between the Port and Pan Pacific Expo regarding Port property located at portions of Pier 48/Pier 50.

d. Property: Francisco Bay Office Park
Person Negotiating:
Port of San Francisco: Douglas F. Wong, Executive Director
Stein Kingsley Stein: Lou Giraudo*

An executive session has been calendared to discuss real estate negotiations between the Port and Stein Kingsley Stein regarding Port property located at Francisco Bay and Embarcadero.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).
b. Discuss existing litigation matter pursuant to subdivision (a) of the California Government Code Section 54956.9 (one case).
- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.

12. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code 54957.1(a)2 and San Francisco Administrative Code 67.14(b)(2).

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code 54957.1(a)(2) and San Francisco Administrative Code 67.14(b)(2).

13. ADJOURNMENT

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
wwwsfport.com

MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas Wong
Executive Director

SUBJECT: APPROVAL OF THE MEXICAN LINE LIMITED (A WHOLLY-OWNED AFFLIATE OF TRANSPORTACION MARITIMA MEXICANA) MARINE TERMINAL AGREEMENT

DIRECTOR'S RECOMMENDATION: APPROVE THE 5-YEAR MARINE TERMINAL AGREEMENT WITH MEXICAN LINE LIMITED (A WHOLLY-OWNED AFFLIATE OF TRANSPORTACION MARITIMA MEXICANA) AT PIER 80 AND AUTHORIZE THE EXECUTIVE DIRECTOR TO SEEK APPROVAL BY THE SAN FRANCISCO BOARD OF SUPERVISORS TO AMEND THE AGREEMENTS TO INCLUDE A MUTUAL INDEMNITY CLAUSE.

Effective December 1998, the Serpac Group (TM Grancolombiana (TMG), Columbus Line and Chilean Lines) will disband their joint operating agreement, and Chilean Lines will cease Northern California calls. A new joint service will be formed that will include Mexican Line Limited (TMM/TMG), Columbus Line and Maruba s.c.a. The new service will provide additional revenue for the Port through increased cargo volumes and vessel calls.

While all the carriers involved in the new joint service already call at the Port, the current contracts on file are being cancelled and reissued to reflect the new service structure and partnerships. The Port has concluded negotiations for a new five-year Marine Terminal Agreement with Mexican Line Limited (a wholly owned affiliate of Transportacion Maritima Mexicana). offering a joint service to and from Mexico, Central and South America. Their vessels are expected to make a weekly call with their first vessel in the new service expected in the middle of December, 1998. While they offer a joint service with the carriers mentioned above, they have elected to sign a separate Marine Terminal Agreement for their company.

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Material provisions of the agreement include the following: (i) five year term, commencing on December 1, 1998 with the ability of either party to terminate as of each November 30th; (ii) reduced wharfage and dockage rates based on the total annual volume; (iii) nomination of Pier 80 as their regular published Bay Area port of call.

If Marine Terminals Corp. ceases operations at Pier 80, the Agreement also allows termination by either Port or Carrier if they are unable to reach agreement with a new management contractor.

The Agreement contains an indemnity Mexican Line Limited agrees to indemnify Port and City for claims resulting from its acts wherein or omissions at the facility. The Port's standard exculpation clause, under which the Carrier waives all claims against Port and City including claims due to Port on City's negligence, has been deleted from these Agreements pursuant to Mexican Line Limited' request. In addition Mexican Line Limited has requested an indemnity from Port and City against claims caused by Port or City's negligence. The City's charter requires any indemnities by the City or Port to be approved by the Board of Supervisors. The Agreement provides that upon approval by the Board, parties will sign an amendment to the Agreements to include the Port and City's indemnity. If the Board disapproves the indemnity, Mexican Line Limited may terminate their Agreements upon 30-days–prior written notice.

Estimated annual revenue for the agreements is approximately $490,000 from wharfage, dockage, and crane rental, which is to be shared with MTC per our management agreement with them. A copy of the agreement is attached hereto.

Prepared by: Peter A. Dailey, Director Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-120

WHEREAS, Mexican Line Limited desire to enter into Marine Terminal Agreement(s) with the Port, for use of Port's marine terminal facilities; and

WHEREAS, said Agreement grants Mexican Line Limited reduced dockage and wharfage charges for the utilization of the Carriers of Pier 80 as their regularly scheduled Northern California port of call; and

WHEREAS, the Agreement requires the parties to enter into an amendment to include an indemnity clause by Port and City in favor Mexican Line Limited, upon the approval of the San Francisco Board of Supervisors; now therefore, be it

RESOLVED, that the San Francisco Port Commission approves the Marine Terminal Agreements with Mexican Line Limited, in substantially the form of which is on file with the Secretary of the Port Commission for this agenda item; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director (i) to enter into the Agreements, (ii) to make any necessary refinements to the Agreements as are approved by the City Attorney; (iii) to obtain approval from the Board of Supervisors to amend the agreements to include a Mutual Indemnity clause and to execute such amendment; (iv) to file the Agreements with the Federal Maritime Commission; and (v) to take all such further actions as are necessary to put the Agreements into effect.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998

_____

Secretary

CITY AND COUNTY OF SAN FRANCISCO

Willie L. Brown, Jr., Mayor

MARINE TERMINAL AGREEMENT

BETWEEN

MEXICAN LINE LIMITED

(A WHOLLY-OWNED AFFLIATE OF TRANSPORTACION MARITIMA MEXICANA)

AND
THE CITY AND COUNTY OF SAN FRANCISCO,

A MUNICIPAL CORPORATION, ACTING BY AND THROUGH

THE SAN FRANCISCO PORT COMMISSION

DATED

December 2, 1998

SAN FRANCISCO PORT COMMISSION

DENISE McCARTHY, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
MIKE HARDEMAN, COMMISSIONER
BRIAN McWILLIAMS, COMMISSIONER
PIUS LEE, COMMISSIONER

DOUGLAS WONG
EXECUTIVE DIRECTOR

MARINE TERMINAL AGREEMENT

This non-exclusive Marine Terminal Agreement (the "Agreement") is entered into as of this first day of December, 1998 by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Port Commission ("Port") and Mexican Line Limited, a wholly-owned affiliate of Transportacion Maritima Mexicana, a Mexican Corporation ("Carrier").

WITNESSETH

WHEREAS, City owns certain property located in the City and County of San Francisco pursuant to an act of the legislature of the State of California commonly known as the "Burton Act" (Statutes 1968, Chapter 1333); and

WHEREAS, Pursuant to the Burton Act and the City's Charter, Port exercises jurisdiction and control over said property; and

WHEREAS, Carrier wishes to use a portion of said property which has been improved with a marine terminal for the purpose of moving waterborne cargo through the Port; and

WHEREAS, Port desires to have Carrier use the property for said uses, with said uses being consistent with the public trusts upon which the property is held;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Port and Carrier agree as follows:

ARTICLE I. CARRIER'S TERMINAL RIGHTS

Section 1.01 Right to Use Facilities

Carrier shall have a non-exclusive right to use Pier 80, located at the Port of San Francisco in the City and County of San Francisco (the "Facilities") for the purposes set forth in Article III of this Agreement.

Section 1.02 Right to Transfer

If during the Term Port decides to move the location of its marine terminal to another location on Port property, Port shall give Carrier sixty (60) days prior written notice ("60-day Notice") of its decision. Carrier shall notify Port within thirty (45) days after receipt of Port's 60-day Notice, stating its decision to move to such alternative location, or its intent to terminate this Agreement. If Carrier decides to move to the alternate location, such transfer shall be embodied in an amendment to this Agreement which shall not be effective until filed with the Federal Maritime Commission and deemed effective under the Shipping Act of 1984. If Carrier decides

to terminate the Agreement, such termination shall be effective upon the sixtieth (60th) day after Port's 60-day Notice without any penalty or sum from the carrier towards the port or the terminal operator.

It is further understood that if Carrier agrees to move to the alternate Port location, and if the transfer involves a different terminal operator than the operator listed in section 5.01 under this Agreement, Carrier's notice may be conditional upon negotiating new terminal services arrangements with the new terminal operator. Carrier shall use its best efforts in good faith to negotiate new terminal service arrangements with the terminal operator at the new facility. If Carrier after such best efforts is reasonably unable to complete such terminal service arrangements, Carrier may terminate this Agreement on no less than thirty (30) days' prior written notice to the Port. If Carrier is unable to conclude a new agreement prior to the expiration of Port's 60-day Notice, Port shall allow Carrier a reasonable extension of time to conclude its negotiations; provided, however, Port shall not be required to make the original marine terminal available to Carrier after the expiration of Port's 60-day Notice.

Carrier's failure to give notice after thirty (30) days as provided herein shall be deemed to be an acceptance of the new marine terminal location.

ARTICLE II. TERM

Section 2.01 Commencement of Term

The term of this Agreement shall commence on the first day of the month immediately following the occurrence of all of the following events (the "Commencement Date"):

(a) The filing with and approval of this Agreement by the Federal Maritime Commission, or effectiveness without approval pursuant to the Shipping Act of 1984, or a ruling by the Federal Maritime Commission that such approval is not required; and

(b) Approval of this Agreement by the San Francisco Port Commission.

Port will notify Carrier of the Commencement Date in writing when all of the approvals set forth above have been obtained, however failure to do so shall not affect the validity of this Agreement.

Section 2.02 Term Termination

This Agreement shall terminate five years from the Commencement Date, unless terminated earlier as provided for herein.

ARTICLE III. USE OF THE FACILITIES

Section 3.01 Permitted Uses

Carrier shall use the Facilities as its published regularly scheduled Northern California

port of call for its service between the U.S. West Coast and Mexico, Central and South America for the berthing of Carrier's vessels and the loading and discharging of cargoes therefrom and operations ancillary thereto, and for no other purposes.

ARTICLE IV. COMPENSATION

Section 4.01 When Tariff Provisions Apply

Except as expressly set forth in Section 4.02 below, the provisions of San Francisco Port Commission Tariff No. 4, publishing rules and regulations and rates and charges for wharfinger services at property used as marine terminals at the Port of San Francisco, and amendments and subsequent reissues thereof (collectively, "Tariff"), shall apply to Carrier's use of the Facilities pursuant to this Agreement. Carrier agrees to be bound by and comply with the provisions of the Tariff.

Section 4.02 Fees for Use

As consideration to Carrier for the use of the Facilities as Carrier's regularly scheduled Northern California port of call and for the additional cargoes handled at the facility by Columbus Line Central and South America Service, and Maruba s.c.a., (collectively known as AMPAC) the following provisions shall govern the amount of dockage and wharfage due to Port from Carrier as a result of Carrier's use of the Facilities.

(a) Dockage:

Carrier shall pay 60% of the applicable tariff for dockage charges in effect on June 25, 1998 which would otherwise be due to Port pursuant to the provisions of the Tariff.

(b) Wharfage/Full Containers:

Wharfage on full containers shall be paid by Carrier according to the following schedule, base on annual throughput volume per twelve-month Contract Year (as hereinafter defined) of this Agreement:

Wharfage Rate - Containers

$45.00 per Unit for the first 5,999 Units per contract year
$30.00 per Unit for each additional Unit over 5,999 per contract year

(c) Wharfage on empty containers will be $0.00

(d) Wharfage/Breakbulk:

Breakbulk – General	$ 3.09 R/T
Breakbulk – Project Cargo	2.40 per 1000 Kgs

(e) Equalization/East Bay– An East Bay equalization trucking credit of $20.00 per unit will be granted for cargo originating or destined to East Bay points. The $20.00 will be credited against wharfage due upon presentation of documentation showing an East Bay point. The equalization is subject to a maximum of 50% of total annual volume.

(f) Free Time will be granted as listed below. It is agreed that this free time is subject to approval of the carrier and will not be granted by the Port to any third party with prior approval.

General Cargo – 45 days
Coffee, Project Cargo – 60 days

For the purposes of this section, a "Contract Year" shall commence on each December 1 and shall end on November 30 of the following year. Notwithstanding the Commencement Date, the first Contract Year of this Agreement shall be from December 1, 1998 to November 30, 1999.

Section 4.03 Rate Adjustments

Rates stated in Section 4.02 will be guaranteed for the life of the contract.

Section 4.04 Calculation of Initial Fees

Within ninety days after the Commencement Date, Port and Carrier shall mutually determine the fees due the Port under Section 4.02 above, calculated as if this Agreement had commenced on December 1, 1998. Any amount that Carrier paid Port which exceeds the amount which would have been charged under the preceding sentence will be refunded to Carrier after the Commencement Date.

ARTICLE V. MANAGEMENT OF FACILITIES

Section 5.01 Management Agreement

Carrier acknowledges and agrees that as of the Commencement Date, the responsibility of managing the Facilities has been assigned by Port to Marine Terminals Corp. (MTC) pursuant to that certain Management Agreement between MTC and Port dated December 1997.

ARTICLE VI. TERMINATION

Section 6.01 Termination by Governmental Action

In the event the United States of America or the State of California, or any other governmental authority, shall, by condemnation or otherwise, take title, possession or the right

to possession of the Facilities, or any part thereof, Port may, at its option, and, if the taking has substantially impaired Carrier's use of the Facilities, Carrier may, at its option, terminate this Agreement as of the date of such taking, and all further obligations of the parties shall end, except as to liabilities which shall have accrued prior to the date of taking.

Section 6.02 Termination by Judicial Action

In the event any court having jurisdiction over the subject matter of this Agreement shall render a decision which has become final and which will prevent the performance by Carrier or Port of their obligations hereunder, then either party may terminate this Agreement upon thirty (30) days written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate.

Section 6.03 Right of Termination

Carrier shall have the right to terminate this Agreement without penalty effective on December 1, 1999 and on each December 1 thereafter throughout the Term (each "Termination Date"). Carrier must exercise such termination right by delivering written notice of termination from or to Port or Carrier at least sixty (60) days prior to the applicable Termination Date upon which Carrier desires to terminate. In the event Carrier fails to give timely notice, Carrier may not terminate this agreement until the following Termination Date with proper notice as set forth herein.

Section 6.04 Termination by Resignation of Terminal Contractor

In the event Management Contractor, as defined in Section 5.01, gives Port notice of its intention to cease operations at the Port, Port shall notify Carrier of such notice within ten (10) days. Port shall make its best effort to negotiate an agreement with a new management contractor. In the event Port is unable to successfully conclude such an agreement within sixty (60) days after receiving such notice from Management Contractor, the Port may, at its option, terminate this Agreement upon ninety (90) days prior written notice to Carrier, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrue prior to the effective date of termination) shall thereupon terminate.

It is further understood that if in such event a new management contractor is appointed other than defined in Section 5.01 under this agreement, Carrier shall use its best efforts in good faith to negotiate new terminal services arrangements with the new management contractor and if Carrier after such best efforts is reasonably unable to complete such terminal services arrangements, Carrier may terminate this Agreement on not less than sixty (60) days prior written notice to the Port.

Section 6.05 Termination in Event of Change in AMPAC Agreement

The Parties agree that in the event that Carrier or AMPAC (Filed with the FMC as

The MLL/TMG/Columbus/Maruba Cooperative Working Agreement, FMC Agreement No.203-011637 dated November 25, 1998) enters into a Federal Maritime Commission-filed space sharing agreement with another carrier or carriers which have contract(s) in San Francisco, or should a carrier of AMPAC resign to the AMPAC agreement or AMPAC agreement be terminated, then carrier will be relieved of further obligations under this Agreement without penalty and with immediate effect.

ARTICLE VII. MISCELLANEOUS PROVISIONS

Section 7.01 Taxes

A possessory interest subject to property taxation may be created by this Agreement, and it is understood by the Carrier and the Port that the Port of San Francisco will be responsible for the payment of property taxes levied on such possessory interest. Carrier agrees to provide to Port all information requested by Port for tax purposes, including but not limited to the information described in California Revenue and Taxation Code Section 480.5.

Section 7.02 Books and Records

Carrier shall keep full and accurate books, records and accounts relating to all its operations upon the Facilities, including without limitation, the tonnage of revenue cargo handled, vessel occupancy of the berths and containers handled. Port shall have the right and privilege through its representatives and at all reasonable times to inspect such books, records and accounts. If such books, records and accounts are not kept and maintained within a 25-mile radius of the City and County of San Francisco, Carrier shall make such books, records and accounts available for inspection within said 25-mile radius.

Section 7.03 Nondiscrimination

Carrier shall not, in the use of the Facilities, discriminate against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS-related condition (ARC). The provisions of Chapter 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. Carrier agrees to comply with all provisions of Chapter 12C of the San Francisco Administrative Code which apply to Carrier's use of the Facilities pursuant to this Agreement.

Section 7.04 Hazardous Materials, Etc.

In addition to provisions in the Tariff governing discharge of oil upon navigable waters (Item 113) and explosives and other hazardous and dangerous cargo (Item 117), Carrier will comply with the labeling, packaging, storage and documentation requirements for hazardous materials contained in Title 49, Code of Federal Regulations Parts 100-195, United States Department of Transportation Regulations and the marine pollution regulations contained in Title 33, Code of Federal Regulations Parts 151-157, Navigation and Navigable Waters. The

references to certain laws and regulations set forth above shall apply to any modification, re-issues or amendments to said laws or regulations. In addition, Carrier will report immediately all accidents involving spills of corrosives, explosives or other flammable or dangerous cargoes to the appropriate federal, state, local and Port authorities. As used in this Agreement, hazardous materials" shall mean any substance, waste or material which has been determined by any state, federal or local government authority to be a hazardous or toxic substance or material including without limitation, any hazardous substance as defined in Section 101 (14) of CERCLA (42 USC Section 9601 (14)) or Section 25281 or 25316 of the California Health and Safety Code, and any hazardous material as defined in Section 25501 of the California Health and Safety Code, and any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority. If the presence of any hazardous material on the Facilities caused or permitted by Carrier results in any contamination of the Facilities, Carrier, at its sole expense, shall promptly take all action that is necessary to return the Facilities to the condition existing prior to the introduction of such hazardous material onto the Facilities; provided that Port approval of such actions shall first be obtained, which approval shall not unreasonably withheld as long as such actions could not potentially have any material adverse effect upon the Facilities. Carrier's obligations hereunder shall survive the termination of this Agreement.

Section 7.05 Exculpation and Indemnity

(a)Exculpation. Carrier, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against the City and Port, and their officers, agents and employees, and agrees to hold Port and City and their officers, agents and employees harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Facility for any cause arising at any time, including all claims arising from the joint or concurrent negligence of Port or City, or their officers, agents, or employees, but excluding any intentionally harmful acts committed solely by Port or City.

(b)General Indemnity. Carrier agrees to indemnify, hold harmless and defend, the City and Port and their officers, agents and employees, against any and all claims, judgments, losses, costs, damages, penalties, fines or liabilities of whatever kind (collectively "Claims") arising in any manner out of any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the Facilities, or any part thereof, whether to the person or property of Carrier, its employees, agents, consultants, contractors, or subcontractors (collectively "Agents"), or third persons, resulting from any use or activity of Carrier or its Agents under this Agreement, (ii) any failure by Carrier to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, or (iii) the use of the Facilities or any activities conducted thereon under this Agreement by Carrier or its Agents; except only to the extent of Claims resulting directly from the negligence or willful misconduct of the City or Port or either's authorized representative.

(c) Toxics Indemnity. Carrier agrees to indemnify, hold harmless and defend the City and Port and their officers, agents and employees, from and against any and all claims, demands, actions, causes of actions or suit (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, diminution in value of the

facilities, engineering consultant and attorneys fees of every kind, nature and description, (collectively "Toxics Claims") resulting from any Release of a Hazardous Material caused by or allowed by Carrier or its agents whether or not the Hazardous Materials at the Facilities were present prior to execution of this Agreement; (ii) any requirement of a regulatory agency for investigation or remediation of any Hazardous Materials at the Facilities arising out of or in connection with the activities under this Agreement; or (iii) any breach of or failure to duly perform or observe any term, covenant or agreement in this Agreement to be performed or observed by Carrier, including but not limited to, any violation of any Environmental Law; except only to the extent of Toxic Claims resulting directly from the negligence or willful misconduct of City or Port or either's authorized representative. "Environmental Laws" means present or future any federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Permit Area, including, without limitation, soil, air, bay water and groundwater conditions.

(d) The indemnity obligations in paragraph 7(b), 7(c) and 7(e) shall include reasonable attorneys' fees, investigation costs and all other reasonable costs and expenses incurred by the indemnified party from the first notice that any Claim or Toxics Claim is or may be made. The provisions of this paragraph shall survive termination of this Agreement.

(e) Parties agree that subject to the approval of the Board of Supervisors of an indemnity by Port and City in favor of Carrier, the parties will enter into an amendment to this Agreement substantially in the form of Exhibit A attached hereto. If the indemnity is not approved by the Board of Supervisors, then Carrier will have the right to terminate this Agreement upon thirty (30) days prior written notice to Port, to be delivered to Port no later than ten days after the action by the Board of Supervisors disapproving the indemnity.

(f) In addition to Carrier's obligation to indemnify and hold harmless the City and Port, Carrier specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and Port from any Claim or Toxics Claim which actually or potentially falls within the indemnification provisions of paragraph 7(b) or 7(c), even if the allegations are or may be groundless, false or fraudulent. Carrier's obligations to defend shall arise at the time such Claim or Toxics Claim is tendered to Permittee by City or Port and shall continue at all times thereafter.

Section 7.06 Compliance with Laws.

Carrier, at Carrier's expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Carrier's use of the Facilities in effect either at the Commencement Date or at any time during the term.

Section 7.07 Notices

Any notice, demand or request provided for or permitted to be given pursuant to this Agreement must be in writing and shall be given or served by personal delivery or sent prepaid by either: (a) first-class mail; (b) certified mail with return receipt requested; or (c) overnight delivery service.

Notices shall be addressed as follows:

To Port: Executive Director
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

To Carrier: Mexican Line Limited
Av. De la Cuspide No. 4755 5^{0} Piso
Col. Parques del Pedregal C.P. 14010
Mexico, D.F.
Attn: Alfonso Dix Ponnetz

Section 7.08 Waiver.

No waiver by either party at any time of any of the terms, conditions, covenants or provisions of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or provisions herein contained nor of the strict and prompt performance thereof by the party obligated to perform.

Section 7.09 Applicable Law

This Agreement shall be governed by the laws of the State of California.

Section 7.10 Severability

Should any of the covenants, terms, conditions or provisions set forth in this Agreement be held by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 7.11 Amendments

Neither this Agreement nor any of the terms or conditions hereof may be amended, modified or waived, except by an instrument in writing signed by both Carrier and Port and approved by the Federal Maritime Commission if said approval is required.

Section 7.12 Assignment

Carrier may not assign, convey, encumber, or otherwise transfer (collectively "Transfer") this Agreement without the prior written consent of Port, not to be unreasonably

withheld. Notwithstanding the foregoing, the term "Transfer" shall not include any partnership, corporation or other entity which controls, is controlled by, or is under common control with Carrier or Carrier's parent (control being defined for such purposes as ownership of at least 50% of the equity interests in, or the power to direct the management of, the relevant entity) or to any partnership, corporation or other entity resulting from a merger or consolidation with Carrier or Carrier's parent, or to any person or entity which acquires substantially all the assets of Carrier as a going concern (collectively, an "Affiliate"), provided that (i) Port receives prior written notice of an assignment, (ii) the Affiliate has proven experience in the operation of the uses contemplated by this Agreement, (iii) the Affiliate remains an Affiliate for the duration of the balance of the term in the event of an assignment, (iv) the Affiliate assumes (in the event of an assignment) in writing all of Carrier's obligations under this Agreement, and (v) Port receives a fully executed copy of an assignment agreement between Carrier and the Affiliate.

Section 7.13 Successors

Subject to the provisions of Section 7.12 above, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Port and Carrier.

Section 7.14 MacBride Principles-Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

Section 7.15 Tropical Hardwood Ban.

The City and County of San Francisco urges Carrier not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

Section 7.16 Tobacco Products Advertising Ban. Carrier acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or non-profit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.
//

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

PORT

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting
by and through the SAN FRANCISCO
PORT COMMISSION

By:_____
Name: Denise McCarthy
Title: President – San Francisco Port Commission

Date Executed: December 2, 1998

CARRIER:

Mexican Line Limited, a wholly owned affiliation of Transportacion Maritima Mexicana (TMM)

By: _____
Name:
Title:

Date Executed: December 2, 1998

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By:_____
Deputy City Attorney

I have read and understood paragraph 7.14 the City's statement urging companies doing business in Northern Ireland to more towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

PORT COMMISSION RESOLUTION

No._____

By:_____
Secretary
PORT COMMISSION

FMC No._____

EXHIBIT A

FIRST AMENDMENT TO MARINE TERMINAL AGREEMENT

This First Amendment to the non-exclusive Marine Terminal Agreement (the "First Amendment") is entered into as of this _____ day of _____, 1998 by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Port Commission ("Port") and Mexican Line Limited, a wholly-owned affiliate of Transportacion Maritima Mexicana, a Mexican Corporation ("Carrier").

WITNESSETH

WHEREAS, Port and Carrier have previously entered into a Marine Terminal Agreement (the "Agreement") dated December 1, 1998; and

WHEREAS, the parties desire to amend the Agreement to include an indemnity from Port and City in favor of carrier as approved by the Board of Supervisors Resolution _____.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms set forth herein, Port and Carrier agree as follows:

1. Indemnity

Section 7.05 of the Agreement, entitled "Exculpation and Indemnity's is amended to add the following clause:

"Port and City agree to indemnify, defend and hold Carrier, its vessels, owners or agents harmless from and against any and all losses, expenses, claims, actions or liabilities to the extent the same is caused by the negligence or willful misconduct of Port or City".

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the day and year first written above.

PORT	CARRIER
CITY AND COUNTY OF SAN FRANCISCO, A municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION	Mexican Line Limited. a wholly owned affiliation of Transportacion Maritima Mexicana (TMM)
By: _____ Name: DOUGLAS WONG Title: Executive Director	By: _____ Name: Title:
Date Executed: _____	Date Executed: _____

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

BY: _____
Deputy City Attorney

FMC No. _____

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
wwwsfport.com

MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Adoption of Negative Declaration and approval of Memorandum of Understanding with the Department of Public Transportation (MUNI) for all of Seawall Lot 354 located at the southeast corner of Marin Street and Indiana Street for use as a vehicle maintenance facility

DIRECTOR'S RECOMMENDATION: ADOPT NEGATIVE DECLARATION AND APPROVE MEMORANDUM OF UNDERSTANDING

BACKGROUND

The Department of Public Transportation ("MUNI") has approached the Port to lease via a Memorandum of Understanding 25,145 square feet of Shed Space, 1,319 square feet of Office Space, 75,787 square feet of paved yard and 18,700 square feet of unpaved yard at Seawall Lot 354 ("SWL 354") located at the southwest corner of Marin Street and Indiana Street bound by Marin Street to the north, Tennessee Street to the east, Islais Creek to the south and Indiana Street to the west. A site plan of SWL 354 is attached to this memorandum as Exhibit A.

MUNI proposes to utilize SWL 354 as a temporary vehicle storage, fueling, maintenance and repair facility during, MUNI's renovation of its Woods and Kirkland vehicle storage, fueling, maintenance and repair facilities.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

MUNI has applied for environmental review from the San Francisco Planning Department, Office of Environmental Review ("O.E.R."). The OER filed a Notice of Declaration on April 10, 1990 regarding a Negative Declaration published on May 5, 1989 and amended June 20, 1989 by Memorandum dated September 14, 1998. O.E.R. determined that the Negative Declaration adopted on June 20, 1989 adequately analyzed the operation and maintenance facility anticipated by the MOU and that "...no additional environmental review is required pursuant to CEQA." A copy of the September 14, 1998 memorandum and the 1989 Negative Declaration are attached to this memorandum as Exhibit B.

Port staff has negotiated all of the terms of the proposed MOU as outlined below.

Port Commission policy requires that the Port Commission approve any lease or MOU providing for use which is a change of "like kind" use to the existing or immediately prior use of the facility. Because a portion of the site affected by the proposed MOU has not been used for any purpose for over five years, any use would constitute a change of "like kind" use to the existing or immediately prior use.

The Port Commission is also required to adopt certain findings under the California Environmental Quality Act with regard to the Negative Declaration.

PROPOSED MOU TERMS

Proposed Terms and Conditions

1. **Tenant**: The San Francisco Public Transportation Commission (MUNI).

2. **Premises**: Seawall Lot 354 consisting of:

   Maintenance and Repair Building
   25,145 sq. ft. of open shed space
   1,319 sq. ft. of office space

   Yard
   75,787 sq. ft. of paved yard
   18,700 sq. ft. of office space

3. **Term**: Thirty (30) months

4. **Use**: Storage, fueling, maintenance and repair and administrative offices and incidental directly related uses.

5. **Use Fee**: $29,520.00 per calendar month, adjusted annually by CPI.

6. **Rent Credits**: None.

7. **Commencement Date**: December 1, 1998.

Commission approval is required to permit a Right of Early Entry longer than one month. MUNI must make significant modifications to the Maintenance and Repair Building in order to accommodate the proposed use and will pave the 18,700 square feet of unpaved yard space (former Minnesota Street) during the early entry period.

Prepared by: Nicolas J. Dempsey, Commercial Property Manager, Leasing

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PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-121

WHEREAS, Charter Section B3.581 empowers the Port commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581 (g) leases granted or made by the Port Commission shall be administered exclusively by the operation forces or the Port Commission; and

WHEREAS, the San Francisco Public Transportation Commission ("MUNI") desires to utilize Port property at Seawall Lot 354 as a temporary vehicle maintenance, storage, fueling, repair and administrative office facility during the renovation of one or more of MUNI's existing vehicle maintenance facilities; and

WHEREAS, on May 5, 1989, the City Planning Department issued a preliminary negative declaration, 88.700E for a MUNI Facility on property located generally between Army, Indiana, Marin, Tennessee Streets, I-280 and Islais Creek Channel; and

WHEREAS, on June 20, 1989, the City Planning Department adopted and issued a Final Negative Declaration for the MUNI Facility; and

WHEREAS, on June 29, 1989, the City Planning Department determined that the proposed project was in conformity with the City's Master Plan; and

WHEREAS, on April 2, 1990, after a duly noticed and conducted public hearing on March 28, 1990, the Board of Supervisors adopted the final negative declaration and the findings of the negative declaration, which findings are incorporated herein by reference, and authorized acquisition of property and construction of the MUNI Facility; and

WHEREAS, on September 9, 1998, the City Planning Department issued an addendum to the final negative declaration for the MUNI Facility; and

WHEREAS, MUNI and the Port have negotiated the terms of a Memorandum of Understanding (MOU No. M-12581); now, therefore, be it

RESOLVED, the San Francisco Port Commission, in exercising its independent judgment, adopts the following findings with respect to the approval

of the Memorandum of Understanding (MOU) with the Public Transportation Department for use and occupancy of Seawall Lot 354, in conformance with the California Environmental Quality Act ("CEQA"):

(a) The Port Commission has relied upon and reviewed the information contained in the MUNI Facility negative declaration (1989, Case No. 88.700E), the addendum prepared by the City Planning Department, dated September 9, 1998, and associated attachments, records, and references as the environmental review documents for the approval of the MOU for the MUNI Facility; and

(b) The Port Commission adopts those CEQA findings for the MUNI Facility adopted by the Board of Supervisors by Resolution 243-90, dated April 2, 1990, as if those findings were made by this Commission and incorporates said findings and associated attachments, records, and references in their entirety by reference herein; and

(c) Any and all documents referenced herein have been made available to and reviewed by the Port Commission and are either attached hereto or may be found in the files of the City Planning Department at 1660 Mission Street in San Francisco; and

(d) Changes in the project and in circumstances under which the project is undertaken and new information since the conclusions reached in the negative declaration have been analyzed in the addendum; and

(e) The Port Commission finds that changes to the project since preparation of the negative declaration are minor, would result in a less intensive use of the site, staggered over a longer time frame and would not result in new significant impacts; and

(f) The Port Commission finds that new information regarding traffic data and projections would not change the conclusions in the negative declaration that the project would make a negligible contribution to traffic congestion in the vicinity of the project; and

(g) The Port Commission finds that new information included in the addendum regarding air quality impacts from the project would not result in a significant air quality impact from carbon monoxide emissions; and

(h) The Port Commission finds that new information included in the addendum regarding the designation of particulates in diesel emissions as toxic air contaminants would not result in a significant air quality impact because the project would move diesel bus operations from an area with residential receptors to an area where the nearest residential uses are more than 1,500 feet away; and

(i) The Port Commission finds on the basis of the whole record before it that the negative declaration and addendum are adequate and

complete, that there is no substantial evidence that the project would have a significant effect on the environment, and that the negative declaration and addendum reflect the Port Commission's independent judgment and analysis; and be it further

RESOLVED, that any mitigation measures included in the negative declaration are adopted as conditions of approval and will be implemented and monitored as follows:

(a) Construction-period mitigation measures concerning air quality, existing site contamination, handling of hazardous materials during project operation, and prehistoric cultural resources will be implemented by the Public Transportation Department or its designee and will be monitored by City staff through the normal building permit procedures; and

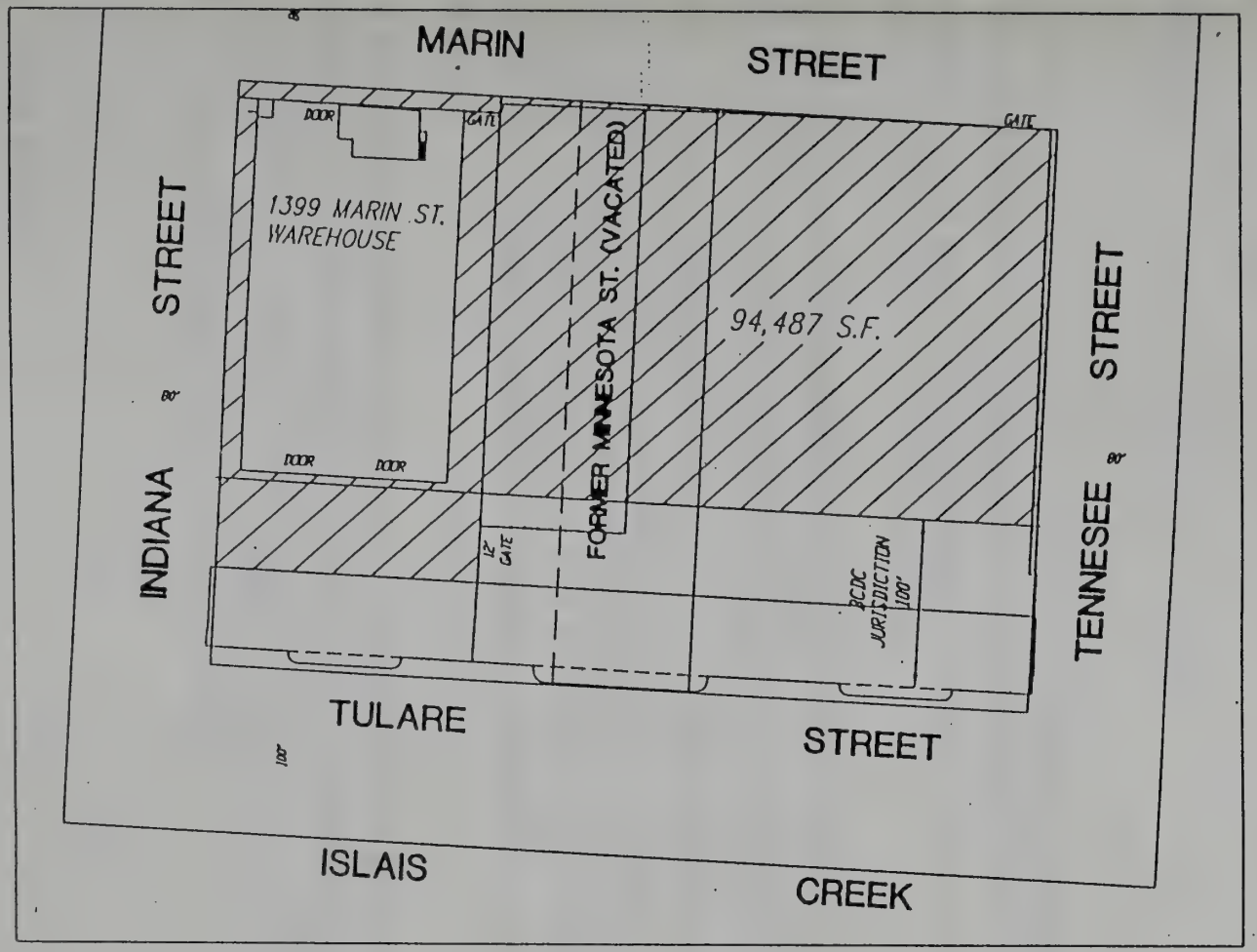
(b) Preparation of a plan for handling and disposing of hazardous materials during facility operation in accordance with the mitigation measure concerning the handling of hazardous materials during project operation, will be implemented by the Public Transportation Department prior to building occupancy and will be monitored by the Department of Public Health, the City Planning Department and the Department of Building Inspection as described in the text of the measure; and be it further

RESOLVED, that the Port Commission hereby approves MOU No. M-12581 between the Port and MUNI. incorporating the business terms set forth in the Memorandum for Agenda Item 5A for the Port Commission meeting on December 17, 1998, and authorizes the Executive Director or his designee to execute the MOU, and to take such further action as may be required to implement the MOU, in consultation with the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

EXHIBIT A



YARD AREA LESS WAREHOUSE = 94,487 S.F.

INITIALS: PORT _____ TENANT _____

LEASE NO. MOU No. M-12581	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO	TENANT: DEPT. OF PUBLIC WORKS (MUNI)	DRAWN BY: G. DUDLEY; DATE: JULY 30, 1998; CHECKED BY:; SCALE:; PLACE CODE NO. 3540-0-0000; SHEET NO. 1 OF 2 SHEETS

G:\GDUDLEY\LEASE\EXHIBIT-SWL\SWL354M1

PLANNING DEPARTMENT

City and County of San Francisco 1660 Mission Street San Francisco, CA 94103-2414

(415) 558-6378 PLANNING COMMISSION FAX: 558-6409 ADMINISTRATION FAX: 558-6426 CURRENT PLANNING/ZONING FAX: 558-6409 LONG RANGE PLANNING FAX: 558-6426

MEMORANDUM

TO: Kirsten Magary

FROM: Hillary E. Gitelman

DATE: September 14, 1998

SUBJECT: MUNI Facilities at Islais Creek

Attached for your use is the Planning Department's analysis regarding environmental review requirements for the proposed MUNI facilities at Islais Creek. Please share this memorandum with those of your colleagues who are working on the temporary relocation of operations from the Woods facility.

As you know, an operations and maintenance facility on this site was analyzed in a Negative Declaration, adopted on June 20, 1989. Based on the attached analysis, it is the Planning Department's opinion that no additional environmental review is required pursuant to CEQA. The attached analysis has taken into consideration changes in the project description, changes in circumstances related to cumulative growth and transportation issues, and changes in information related to diesel exhaust and toxic air contaminants. We have concluded that none of these changes would result in new significant environmental impacts or change the conclusions of the 1989 Negative Declaration.

Please ensure that the attached memorandum is made available, with the 1989 Negative Declaration, to all decision makers who will consider adoption or implementation of the proposed projects. I would be happy to provide assistance regarding the necessary CEQA findings for related motions or resolutions, or to answer any further questions you have. Please do not hesitate to call me at 558-6381.

Attachments

cc: Elaine Warren
Noreen Ambrose

EXHIBIT B

PLANNING DEPARTMENT

City and County of San Francisco 1660 Mission Street San Francisco, CA 94103-2414

(415) 558-6378 PLANNING COMMISSION FAX: 558-6409 ADMINISTRATION FAX: 558-6426 CURRENT PLANNING/ZONING FAX: 558-6409 LONG RANGE PLANNING FAX: 558-6426

September 9, 1998

MEMORANDUM

TO: File 88.700E/MUNI Diesel Coach Operating Division & Central Maintenance Facility

FROM: Hillary Gitelman HG

RE: Assessment of Environmental Review Requirements

This memorandum is intended to assess whether additional environmental review is required prior to implementation of MUNI's proposed facilities near Islais Creek. These facilities, which are described below, were analyzed in a 1989 negative declaration, and are now proposed for modification and implementation in 1998 and 1999. The original analysis and supporting informaton are attached.

Background

In 1989, MUNI proposed constructing a Diesel Coach Operating Division and Central Maintenance Facility for a site adjacent to Islais Creek and bounded by Tennessee, Marin, Indiana, and Cesar Chavez (then Army) Streets, the elevated I-280 Freeway, and Islais. The proposed facility would have been used for the storage, routine maintenance and dispatching of up to 200 diesel coaches, which are now housed at the Kirkland site in Fisherman's Wharf, and would have provided for centralized heavy repair and maintenance of the entire diesel fleet of about 500 coaches. The proposal anticipated acquisition of the site, construction of a two or three-story 235,000 sq. ft. building, some smaller buildings and canopies, paving and infrastructure improvements, and provision of enhanced public access along Islais Creek.

On May 5, 1989, the Planning Department determined that the proposed facility would not have a significant effect on the environment, and published a preliminary negative declaration. The negative declaration was subsequently amended and finalized on June 20, 1989. In April 1990, the San Francisco Board of Supervisors approved MUNI's acquisition of the site (Board File No. 84-90-1), although subsequent approvals were never sought, and the project has never been implemented.

MUNI now proposes to proceed with implementation of the project, with several modifications:

- The portion of the site east of Indiana Street would not be included in the new Operating and Maintenance Facility, but an existing warehouse on that site would be leased from the Port temporarily for storage, fueling, and dispatching of the diesel fleet (165 coaches) currently housed at the Woods Facility, while that facility is being upgraded. The temporary facility would be in operation for about one year.

- The maintenance functions originally proposed for the site would be scaled-back, and would not service the entire diesel fleet, but only that portion of the fleet that is housed at the new facility (now estimated at 165 buses, with potential future expansion to 200).

- The new facility would be constructed in two phases: phase one would include diesel bus parking areas, a 66,000 sq. ft. building for maintenance, office, and training, wash and fueling facilities on 5.32 acres of City-owned property. Phase two would include more maintenance facilities, bus and employee parking, and would occur on 2.4 additional acres to be acquired or leased from Caltrans.

Further details regarding the design and layout of the proposed Islais Creek facility are now available, site investigations for hazardous materials are underway, and proposed infrastructure improvements have been defined. These improvements would include upgrading an existing sewer pipe on site, installing trench drains connected to an oil/water separator around the fueling facility, installing a separate oil/water separator for the steam clean area, and constructing catch basins that double as detention structures and are connected to an oil/water separator. The site currently drains to the City's combined sewer system, and would continue to do so.

According to MUNI staff, discussions with the Friends of Islais Creek have continued about the nature of public access improvements along the Creek. As was the case in 1989 when the project was originally proposed, it is expected that the final location and nature of improvements to this public access would be determined in negotiations with BCDC at the time MUNI seeks a permit from that agency. For environmental review purposes, it is assumed that this regulatory process required prior to project construction would prevent degradation of the creek area and provide for safe and desirable public access improvements, precluding any related significant impacts.

Federal funding is now being sought for the project, and the FTA will determine the level of review required under NEPA. A Section 106 evaluation of remaining industrial structures on and adjacent to the site may be required, and may result in a determination that the "pellet loader" is eligible for the National Register of Historic Places. MUNI does not proposed to remove or alter this structure, and the Friends of Islais Creek have proposed preserving it within the open space adjacent to the Creek and the MUNI facility.

In July 1998, MUNI completed a facilities plan which explains this proposal for the Islais Creek site in the context of all proposed changes to the Motor Coach Division between 1998 and 2012. These changes will include improvements at the existing Woods facility and elimination of the Kirkland facility in Fisherman's Wharf. The final use and disposition of the Kirkland site have not been determined.

Scope of Analysis

Section 31.35 of the San Francisco Administrative Code and CEQA Guidelines Section 15162 suggest that projects which have been modified must be reevaluated to determine whether the project modifications, new information, or changes in circumstances, would result in any new significant impacts. If no new significant impacts would result, no new environmental evaluation is required, and the reasons for such a determination must be documented in the project file. This documentation is commonly called a "Note to the File" or an addendum to the original negative declaration. If new significant impacts would occur, a new environmental analysis is warranted, and a new initial study should be prepared. This initial study will either lead to a new mitigated negative declaration or a focused environmental impact report.

In the current situation, the changes to the project have been minor, and would result in a less intensive use of the site, staggered over a longer time frame. These changes would not result in new significant impacts. Changes in circumstances including planning and development in the Islais Creek vicinity, and new information regarding diesel bus emissions warrant further consideration. These are analyzed in light of heightened concerns in the Bayview-Hunters Point community regarding health effects of air pollution and environmental contamination.

Two recent studies by the City's Department of Public Health addressed health issues in the nearby community. The first study concluded that for the period 1991 to 1992, neighborhood residents had among the highest hospitalization rates in all age groups in the State of California for asthma, hypertension, congestive heart failure, and diabetes mellitus. The study also showed high rates of cancer, breast cancer mortality, and other causes of death, and suggested that "the poor health status of residents in BVHP reflects, in large part, racial disparities in health status among San Francisco residents."[1] The second study showed that cancer incidence during the 1993 to 1995 period was not meaningfully higher among the neighborhood population than among their counterparts in the rest of the Bay Area. [2] Neither study attempted to determine the effects of environmental factors on health, however, concerns regarding human health and potential environmental factors persist, and are heightened by the concentration of air polluting industries in the neighborhood.

Planning & Development in the Vicinity

Establishment of a MUNI diesel bus facility at the Islais Creek site would not conflict with any adopted plans or policies, but may be considered by decision makers in light of existing plans and ongoing planning efforts. Adopted plans include the Port's Waterfront Land Use Plan, the City's

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[1]Tomas Aragon, MD, MPH & Kevin Grumbach, MD. "Community Health Profile; Bayview Hunters Point Health & Environmental Assessment Project," July 19, 1997.

[2]Eva R. Glazer, MD, MPH, Martha M. Davis, MSPH, and Tomas Aragon, MD, MPH. "Cancer Indecence Among Residents of the Bayview Hunters Point Neighborhood, San Francisco , California 1993-1995," January 1998.

General Plan, and BCDC's plans governing the use of lands adjacent to the Bay. Because of the FTA's involvement, the project will also require a finding of conformity by BCDC under the Coastal Zone Management Act.

Ongoing planning efforts in the area have embraced proposed public access improvements along Islais Creek, and have included consideration by the Redevelopment Agency of potential development sites and redevelopment mechanisms for the larger Bayview Hunters Point area. MUNI's Third Street Light Rail project is expected to result in increased transit reliability along the Third Street corridor, stimulate economic revitalization in the core area, and construct a maintenance/storage yard for light rail vehicles on a 13 acre portion of the Western Pacific site, east of Third Street and north of Pier 80, between Cesar Chavez and 25th Streets. The Port is also considering the feasibility of a new bridge across Islais Creek, to improve rail access to areas north of the Creek.

The Islais Creek area has historically been industrial in character, and recent land use decisions regarding Port property suggest that this character will be perpetuated. Specifically, the Port's Waterfront Land Use Plan envisions the continuation of industrial and maritime industrial uses on Port property in the vicinity, and recent leases have authorized a recycling facility at Pier 96, and several firms which process construction materials in the vicinity.

All of these uses would result in truck trips, diesel emissions, and particulate emissions, and should be considered in the cumulative context for the proposed project. Potential future traffic increases resulting from projected housing and employment growth in the City should also be factored-in, as provided for in the recent Mission Bay, Hunters Point Shipyard, and Third Street Light Rail Project environmental analyses. Potential cumulative air quality issues are discussed below, along with new information regarding diesel emissions.

Traffic

As described in the 1989 negative declaration, the intersection of Third/Evans, Third/25th, and Evans/Napoleon/Toland experience high traffic volumes and either currently operate at unacceptable levels of service (LOS) in the PM Peak hour, or are projected to do so in the future. Because most buses are in service during periods of peak traffic congestion, the proposed MUNI facility would primarily generate traffic in the early morning or after 6 PM. Thus, the MUNI facility would not be expected to contribute meaningfully to peak congestion in the vicinity.

This conclusion would not change, even if more recent traffic data and projections are taken into account. Information from the recent Third Street Light Rail Draft EIS/EIR is presented below.

Intersection	Existing LOS		2015 LOS		2105 LOS (w/proposed mitigation)	
	AM	PM	AM	PM	AM	PM
Third/25th Street	A	B	B	B	none needed	none needed
Third/Cesar Chavez	C	C	D	F	none needed	none available
Third/Evans	D	D	E	E	D	D
Source: 96.281E/Third Street Light Rail Project Draft EIS/EIR, April 3, 1998.						

As noted above, the intersection of Third Street and Cesar Chavez is the only one analyzed in the vicinity that was projected to operate at an unacceptable level after implementation of the 3rd Street Light Rail Project if cumulative development projections are taken into account. The proposed MUNI facility would make a negligible contribution to traffic operating through this intersection, and its contribution would primarily be in off-peak periods, when traffic congestion is not typically as great.

Air Quality

The 1989 negative declaration concluded that the project would not have a significant effect on air quality for several reasons. First, the project would not increase vehicle trips within the City, it would simply relocate those trips from the Kirkland site and the Woods site to the Islais Creek site. Second, vehicle trips to the site would not exceed the 2,000 threshold which the BAAQMD had then established as indicating the potential for air quality problems and the necessity for further analysis. Finally, the vehicle mix suggested that Carbon Monoxide (CO) emissions would be less than if all of the trips were by light duty vehicles (i.e. not diesel busses).

The modified project would still result in a relocation of existing vehicle trips from other parts of the City to the Islais Creek area, and would not result in an increase in trips. The relocation of trips from the Woods facility would be temporary, and is projected to last one year while underground tanks are replaced and other upgrades are implemented at Woods. Also, the 2,000 trips per day is still suggested by the BAAQMD as a way to screen out projects that may have a significant impact due to their total emissions, and the project would not exceed this threshold. The conclusion that the project would not result in significant CO emissions was verified in a 1996 analysis prepared by AGS, Inc., which concluded that the project increases in the 1-hour and 8-hour CO concentrations would be virtually indistinguishable from ambient background values.[3]

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[3]Howard Nalentine, C.M.M., AGS, Inc., "Air Quality Modeling Analysis of Proposed Increases in Vehicle Emissions Associated with the MUNI Railway Islais Creek Facility Development" Draft, n.d.

Since 1989, new information has become available regarding the potentially harmful effects of diesel emissions. While there is still a great deal that is unknown about these emissions, the State's Air Resources Board (ARB) has recently designated the particulates in diesel emissions as a Toxic Air Contaminant (TAC). TACs are defined as substances which may "cause or contribute to an increase in mortality and serious illness, or which may pose a present or potential hazard to human health."[4]

According to a recent ARB publication, "diesel exhaust is a complex mixture of thousands of gases and fine particulates . . . the composition will vary depending on engine type, operating conditions, fuel composition, lubricating oil, and whether an emission control system is present." Diesel emissions are on the decline in California, due to improvements in fuel and vehicle technologies, and future exposures are projected to be lower than current exposures. According to the same source, "Exposures to diesel exhaust are difficult to precisely quantify because of its complex composition, and because many of its components are also emitted from other sources, such as tobacco smoke, manufacturing emissions, and woodsmoke."

Staff of the ARB have estimated total air exposure concentration of diesel exhaust particulate matter in California at 1.5 ug/m3. Near-source exposures to diesel emissions occur near busy roads and intersections, near oil and gas production areas, shipping docks, and other areas where diesel engine use is common. According to a 1993 study, concentrations of diesel exhaust particulates adjacent to freeways can exceed the total air exposure estimate by about six times (10 ug/m3), and can exceed the outdoor ambient air concentration (2.2 ug/m3) by about five times. The ARB has not established a threshold below which no significant adverse health effects are anticipated, citing a lack of available information, but does project ambient levels of diesel exhaust PM10 to be reduced by about 20 percent from 1995 to 2010 due to emission reductions.[5]

Based on available information, it seems as a policy matter that relocating diesel bus storage areas away from residential uses would be an appropriate safeguard of public health, and would constitute an environmental benefit of the project. Relocation of the Kirkland functions (and the Woods functions temporarily) to Islais Creek would increase diesel exhaust emissions in that area, however, and some considerations should be given to the likely consequences. The proposed Islais Creek Site was in a totally industrial area in 1989, and remains so today. The site is adjacent to the I-280 freeway, which separates the site from the nearest residential uses, which are at least 1,500 feet to

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[4]SF Chronicle, August 28, 1998. -- and -- CA Health & Safety Code Section 39655.

[5]Air Resources Board and the Office of Environmental Health Hazard Assessment, "Executive Summary; for the 'Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant.' April 22, 1998. -- and -- California Environmental Protection Agency Air Resources Board, "Initial Statement of Reasons for Rulemaking: Staff Report; Proposed Identification of Diesel Exhaust As a Toxic Air Contaminant," June 1998.

the northwest of the site. On the east side of the freeway, no residential uses are within proximity to the site.

The recent ARB studies do not provide information on the disbursion of diesel exhaust components as the distance from the type of use proposed increases, and it is unknown at what distance exposures would be equivalent to the State's average ambient levels. Also, because the freeway is part of the local setting, there's some question whether "ambient" conditions would represent an appropriate comparison or baseline.

The Bay Area Air Quality Management District (BAAQMD's) CEQA Guidelines were drafted prior to the designation of particulates from diesel emissions as a TAC, but state "when considering potential impacts related to TACs, Lead Agencies should consider both of the following situations: 1) a new or modified source of TACs is proposed for a location near existing residential area or other sensitive receptor, and 2) a residential development or other sensitive receptor is proposed for a site near an existing source of TACs." This statement addresses stationary sources, and the Guidelines appear to suggest that when one of these situations occurs, a significant impact would occur, and a risk assessment should be performed. Neither of these situations would occur with implementation of the MUNI facility.[6]

When consulted, staff of the BAAQMD indicated that the proposed MUNI facility would not be considered a traditional stationary source, but could be analyzed as an "area source." Agency staff noted that traditional modeling methods might be difficult to use, given the proximity of the freeway. Modeling would also be unable to quantify the combined effects of TAC emissions from the proposed facility with PM10 emissions from nearby construction-materials operations, because the analysis methodologies and significance standards for the two types of emissions are so different.[7]

Typically if emissions from a stationary or "area source" are modeled and analyzed via a risk assessment, potential remedies or mitigation measures resulting from that analysis would include siting the facility at sufficient distance from sensitive receptors (residences, child care, etc.) to reduce potential risks. The proposed MUNI facility is already sited in such a way that there would be a "buffer zone" between the site and residential uses. In fact, it would be extremely difficult or impossible to locate the facility within the City limits and at a greater distance from residential receptors. The distance between the site and the nearest residential receptor has been estimated at more than 1,500 feet, which bears a resemblance to the 500 meter threshold for reevaluation of permitted stationary sources under the Air Toxic "Hot Spots" Information and Assessment Act (CA Health and Safety Code Section 44344.7 (a) (2), 1997).

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[6]Bay Area Air Quality Management District, "BAAQMD CEQA Guidelines; Assessing the Air Quality Impacts of Projects and Plans," April 1996.

[7]Steve Hill, BAAQMD Staff, conversation with Hillary Gitelman, September 9, 1998.

Conclusion

For all of the reasons explained above and in the 1989 negative declaration, it appears that the new MUNI facility would not have a significant effect on the environment. The proposed project would be smaller than originally analyzed, and would move the diesel bus facility from an area with residential receptors to an area where the nearest residential uses are more than 1,500 feet away.

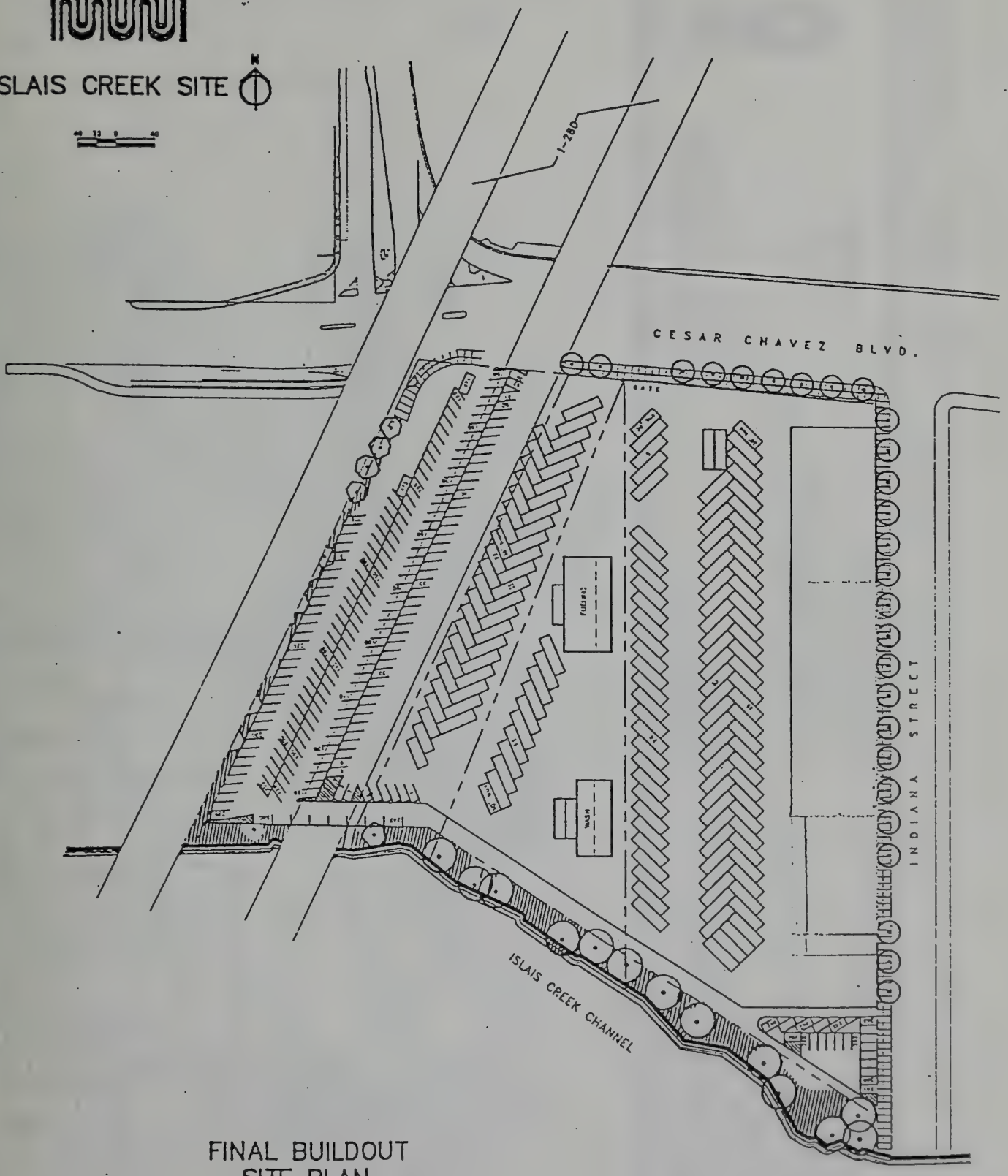
Independent of MUNI's proposed project, the overall relationship between diesel emissions and permitted land uses appears to warrant future study, as more is learned about potential health effects and exposure levels in various areas of the City.

LAND USE IN VICINITY OF ISLAIS CREEK

LAND USE IN VICINITY OF ISLAIS CREEK

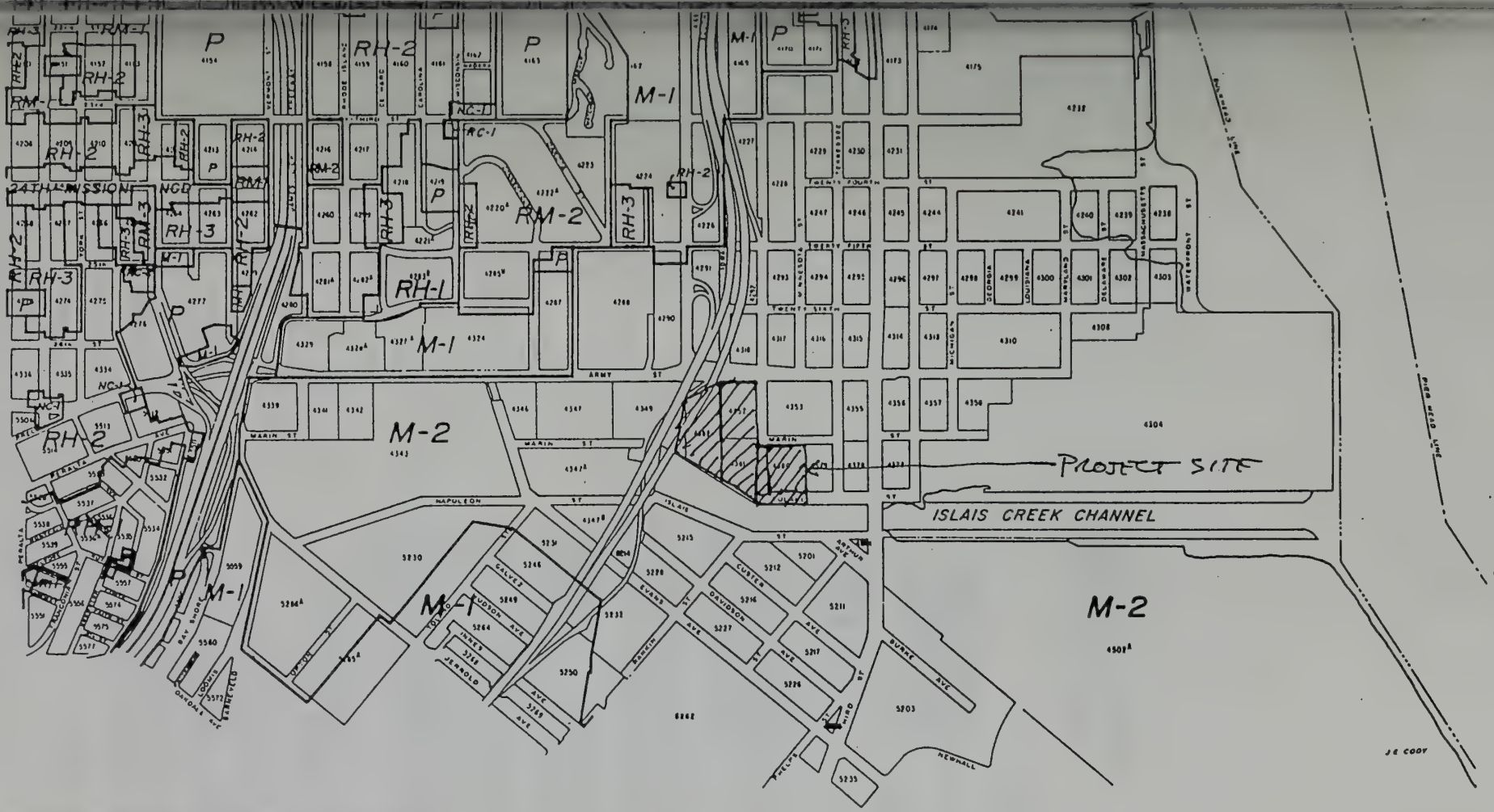
MUNI

ISLAIS CREEK SITE



FINAL BUILDOUT
SITE PLAN
(PHASE 1 AND 2)

MUNI DIAGRAM. PROVIDED SEPTEMBER 1998. (TEMPORARY WOODS RELOCATION



HOUSE CHARACTER DISTRICTS

RH-1(D) | RH-1 | RH-1(S) | RH-2 | RH-3

MIXED HOUSE & APARTMENT CHARACTER DISTRICTS

RM-1 | RM-2 | RM-3 | RM-4

RESIDENTIAL-COMMERCIAL COMBINED DISTRICTS

RC-3 | RC-4

COMMERCIAL DISTRICTS

C-2 | C-3-O | C-3-R | C-3-G | C-3-S | C-M

INDUSTRIAL DISTRICTS

M-1 | M-2

PUBLIC DISTRICT

P

NEIGHBORHOOD COMMERCIAL DISTRICTS

NC-1 | NC-2 | NC-3 | NC-S | NCD

SOUTH OF MARKET

RED | SLI | SLR | SSO

SAN FRANCISCO MUNICIPAL CODE
PART II, CHAPTER II, SECTION 209
WITH AMENDMENTS TO & INCLUDING
NOV. 1995

NORTH

0 FEET 800

SHEET

8

ZONING MAP OF THE CITY AND COUNTY OF SAN FRANCISCO

Office of Environmental Review
Department of City Planning
450 McAllister Street
San Francisco, CA 94102

ENDORSED
FILED
San Francisco County Superior Court

APR 16 1990

DONALD M. BRINKSON, Clerk
BY: D. SHERWOOD
Deputy Clerk

NOTICE OF DETERMINATION

X State of California
Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
State Clearinghouse No.: 89050912

X County Clerk
City and County of San Francisco
317 City Hall
San Francisco, CA 94102

Pursuant to the California Environmental Quality Act (CEQA), the Guidelines of the Secretary for Resources and San Francisco requirements, this Notice of Determination is transmitted to you for filing. At the end of the posting period, please return this Notice to the Contact Person with a notation of the period it was posted.

File Number and Project Title: 88.700ER: MUNI Diesel Coach Operating Division and Central Maintenance Facility
Address: Area bounded by Army, Indiana, Marin, and Tennessee Streets, Islais Creek and the elevated I-280 freeway.

Project Description: The railway diesel coach operating division would house the storage, routine maintenance and dispatching of a fleet of up to 200 diesel coaches, the central maintenance facility would house the heavy repair functions for MUNI's entire fleet of diesel coaches.

Lead Agency: City and County of San Francisco by Department of City Planning, 450 McAllister Street, San Francisco, CA 94102
Contact Person: Catherine Bauman Telephone: (415) 558-6392

The City and County of San Francisco decided to carry out or approve the project on April 6, 1990 (date). A copy of the document(s) may be examined at the Board of Supervisors, Room 235, City Hall, San Francisco, CA., in file No. 84-90-1

1. An environmental document has been prepared pursuant to the provisions of CEQA, as noted below. It is available to the public and may be examined at the Office of Environmental Review at the above address.

   ___Certificate of Exemption
   X Negative Declaration
   ___Environmental Impact Report

2. A determination has been made that the project in its approved form

   X will not have a significant effect on the environment.
   ___will have a significant effect on the environment and findings were made pursuant to Section 15091 and a statement of overriding considerations was adopted.

3. Mitigation Measures X were ___were not made a condition of approval.

Sincerely,
Dean L. Macris,
Director of Planning

Barbara W. Sahm

by Barbara W. Sahm,
Environmental Review Officer

Sincerely,

John Taylor

John Taylor,
Clerk, Board of Supervisors

cc: Sue C. Hestor
870 Market St, #1121
San Francisco CA 94102

cc: Project Sponsor: Jim Nelson, PUC
425 Mason Street
San Francisco, CA 94102

OER/11

NEGATIVE DECLARATION

Date of Publication of
Preliminary Negative Declaration: May 5, 1989. Amended June 20, 1989

Lead Agency: City and County of San Francisco, Department of City Planning
450 McAllister Street, 5th Floor, CA 94102

Agency Contact Person: Catherine Bauman Telephone: (415) 558-6392

Project Title: 88.700ER: MUNI Diesel Coach Operating Division and Central Maintenance Facility
Project Sponsor: San Francisco Public Utilities Commission
Project Contact Person: Jim Nelson

Project Address: Area bounded by Army, Indiana, Marin and Tennessee Streets, Islais Creek and the elevated I-280 freeway
City and County: San Francisco

Project Description: MUNI proposes to establish a Railway Diesel coach Operating Division and Central Maintenance Facility. The facility would (1) house the storage, routine maintenance and dispatching of a fleet of up to 200 diesel coaches; (2) house the heavy repair functions for MUNI's entire fleet of 500 coaches which would be brought to the site as necessary.

THIS PROJECT COULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance) and 15070 (Decision to Prepare a Negative Declaration), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached:

Project Description. MUNI proposes to establish a Diesel Coach Operating Division and Central Maintenance Facility on a site bounded by Tennessee, Marin, Indiana and Army Streets and by the elevated I-280 freeway and Islais Creek. The Operating Division would house the storage, routine maintenance and dispatching of a fleet of up to 200 diesel coaches. The Central Maintenance Facility would house the heavy repair functions for MUNI's entire fleet of 500 coaches; coaches would be brought to the site for maintenance as necessary. All existing buildings and structures on the site would be demolished.

Portions of the 537,300 square foot site are currently owned by Caltrans, the City of San Francisco, the Port of San Francisco and a private owner. In order to carry out the project, the Public Utilities Commission must acquire or lease the property from the current owners. There are several assessor's lots included in the site. Blocks 4379 and 4380 (bounded by Marin, Tennessee, Tulare and Indiana Streets) are held by the Port of San Francisco. Block 4381 and a portion of Block 4352 are owned by Granex, Inc. Portions of Block 4382 and 4352 are owned by the City of San Francisco. A portion of Block 4382 is owned by Caltrans. The project site also includes a section of Indiana Street which would be vacated. In order for the project to proceed, each of these

-Over-

Mitigation measures, if any, included in this project to avoid potentially significant effects:

-See p. 9-

Final Negative Declaration adopted and issued on June 20, 1989
Amendments made to the Preliminary Negative Declaration are underlined.

Barbara W. Sahm
BARBARA W. SAHM
Environmental Review Officer

cc: Robert Passmore
Paul Rosetter
Distribution List
Bulletin Board
Master Decision File

BWS:CVB:emb
CVB:142

entities would have to agree to transfer or lease the land to the Public Utilities Commission. The City Planning Commission must determine if the transfers of property to and from City agencies, and the vacation of a section of Indiana Street, are in conformance with the Master Plan.

The project is related to other potential MUNI projects throughout the City, all of which are at early stages of the planning process. The operating division which would be located at the site is currently at the Kirkland Bus Yard, in the Fisherman's Wharf area. The Kirkland Bus Yard is proposed for residential use as part of the ongoing Fisherman's Wharf planning effort. An EIR on the Fisherman's Wharf Plan is currently being prepared by the City (File 88.587E). The Central Maintenance Facility and the Paint and Body Shop which would be located at the site are currently at the Woods Division, located at Indiana and 23rd Streets. Facilities which are currently located at 24th and Utah could move, in turn, to the Woods Division, enabling MUNI to cease operations at 24th and Utah. The project is intended to provide for a consolidation of existing operations, rather than for a substantial expansion of service. It is also intended to allow MUNI to cease operations at two locations (Kirkland and 24th/Utah) which are currently overcrowded and are surrounded by uses which may conflict with the operation of a bus yard

The project would also require approval from the Bay Conservation and Development Commission (BCDC) because it is within 100 feet of Islais Creek. BCDC would consider the project when specific building or grading activities are proposed.[1] The project design and construction would require approval from the Urban Mass Transportation Administration, which would fund a portion of the project.

The site is in an area of predominately industrial uses. It is in an M-2 (Heavy Industrial) zoning district The portion of the site south of the line of Marin Street is in a 40-X height and bulk district. The portion of the site north of the line of Marin Street is in a 65-J height and bulk district. The elevated I-280 freeway is directly to the west. Islais Creek passes by the south side of the site. Warehousing and storage uses are located directly to the north across Army Street. Other nearby uses include a lumber supply outlet, a commercial laundry, a recreational vehicle rental yard, a trucking firm. An auto wrecking operation is located across Islais Creek to the south. The nearest residential district is on Potrero Hill to the northwest of the site. San Francisco Bay is located about 4000 feet to the east. There are a number of boats tied up at Pier 86, to the east of the site along Islais Creek, some of which have been used as residences. These boats are not charged dockage (fees for water use) by the Port and receive no Port services. There is some question as to the legality of the presence of any boats in this area.[2]

Facility planning and site design for the project would not begin until the site has been acquired. This environmental review will consider the likely impacts of the program as it is envisioned at this early stage in the planning process. The potential environmental impacts of the maximum expected level of activity will be analyzed. A likely site design based on the program will be assumed. If, as the project progresses, the program for the site changes sothat different activities or a different level of activity are expected, or if the site design raises potential environmental issues which are not considered here, additional environmental review will be required.

This analysis assumes that, as a result of the requirements of BCDC, public access along Islais Creek would be provided and the site design would include the improvement of the edge of the Creek to enhance public access.[1] A citizens group, the Friends of Islais Creek, is currently investigating the feasibility of restoring the edges of the creek to provide attractive public access and wildlife habitat in cooperation with the Port and other property owners.[3] No design has yet been developed for such a creek-side path. Should the site be acquired and the project proceed, the public access would be developed by MUNI in cooperation with interested citizens groups and would be reviewed and approved by BCDC. Any such public access or wildlife habitat improvements would not result in substantial adverse environmental impacts.

Visual. The site contains a number of industrial structures. The largest is a 26,000 square foot warehouse fronting Indiana Street south of Marin Street. It is about 42 feet tall at its highest point. There are a number of

industrial structures fronting Indiana Street south of Army Street which were used for processing and storing coconut oil. An approximately 50-foot tall "pellet loader" adjacent to the Creek is the tallest structure on the site. All of these structures would be demolished as part of the project. These structures are visible from the south side of Islais Creek. Upper portions of the warehouse and the pellet loader can be seen, as part of the larger industrial district, from the south side of Potrero Hill to the north west. Views of lower buildings on the site from this vantage point are blocked by the about 50-foot tall elevated freeway structure.

A new two or three-story building of approximately 235,000 square feet would be constructed. It would contain bus repair bays and shops, offices and storage. A 6,000 square foot tire shop is also proposed. Other areas to be used for fare retrieval, fueling, cleaning and washing would be covered with canopies. At this early stage in the planning process, these buildings have not been sited or designed. They would, however, be of an industrial nature and would be similar in character to other functional industrial buildings in the area. A portion of the site would be used for open storage of coaches. The upper portions of any buildings would be visible, as part of the larger industrial district, from Potrero Hill. The lower portions of buildings, and parked coaches, would only be visible from viewpoints closer to the site, because of the intervening elevated freeway. Much of the project would be visible from the public access on the site along Islais Creek which would be developed as part of the project or nearby access developed independently of this project. The industrial nature of the site and of the area will influence the character of the public access along the Creek. The project would not degrade the character of this space or result in a significant negative visual impact on the space.

Transportation. The major transportation routes in the vicinity of the project are I-280 and Army Street adjacent to the site, Third Street to the east of the site and Evans Street to the west of the site. Transportation studies have been completed for several proposed projects in the vicinity, including the proposed I-280 Islais Creek Interchange,[4] the proposed Homeporting of the USS Missouri,[5] the Islais Creek Facilities of the San Francisco Clean Water Program,[6] the Mariposa Facilities of the San Francisco Clean Water Program,[7] The San Francisco Container Terminal,[8] and the San Francisco Newspaper Agency Production Plant.[9] All of these analyses assumed a substantial amount of traffic to be generated by the Navy's proposed homeporting project. If that project is not carried out, traffic conditions are likely to be better in the future than was projected in these studies.

These studies have shown that most intersections are currently operating at acceptable levels of service,[10] and are expected to continue to do so with the addition of traffic from these proposed projects and other cumulative traffic increases. However, these studies identify intersections in the project vicinity where future congestion may be at unacceptable levels. At Third/Evans future conditions during the PM peak hour are expected to be unacceptable.[4,5] At Third/25th, future conditions during the PM peak hour would be unacceptable unless mitigations which were assumed to occur as part of individual projects, particularly the Islais Creek Interchange and the Homeporting of the USS Missouri projects were to occur.[4,5] The Islais Creek Interchange, if carried out, is likely to include mitigative design features. Since it now appears unlikely that the Homeporting of the USS Missouri will occur, there will be no new traffic resulting from that project and no need for measures to mitigate the transportation impacts of that project. Evans/Napoleon/Toland is currently operating at unacceptable levels of service during the PM peak hour and is expected to continue to do so.[4,9] The peak hour for traffic using the street system is the heaviest one-hour period between 4 PM and 6 PM, therefore this is the period when additional vehicles would be most likely to result in traffic impacts. Because this is the time when most coaches are operating on their assigned routes, most of the traffic generated by this project would occur in the early morning, or after 6 PM.

The project could result in up to about 430 daily trips ends to the site by coaches from the Operating Division, 30 to 50 daily trips ends by coaches using the Central Maintenance Facility, and about 950 daily trip ends by employees traveling to and from work. Up to 15 deliveries per day would be expected, and two or three dispatchings of trucks to MUNI's other divisions. Some of these trips would not be new to the area, but would represent trips which are currently generated by the Woods facility at Indiana and 23rd Streets or the Army facility at Army and Third Street. (The Army facility is another MUNI operating division, open since 1984, that would cut back its functions late this year and close entirely when the new operating division and Central Maintenance Facility opens.)

The precise impacts of the proposed Operating Division activities on the nearby street system would depend on the lines which would be assigned to the facility and their schedules. Because of the preliminary stage in the planning process, this cannot be determined now. The following analysis uses conservative assumptions about the number of vehicles and their routes on leaving the facility in order to provide a conservative, generalized view of the potential impacts of siting a diesel bus operating division at this location. The analysis considers the impacts of this facility in the context of other nearby MUNI facilities. The peak hours for coaches from the Operating Division leaving or arriving are 6-7 AM and 6-7 PM.[1] Coaches heading for the northern or central portions of the City (most of which are now based at Kirkland) would travel west along Army, passing through the Army/Evans intersection. Assuming that all MUNI coaches heading in these directions were assigned to either the proposed project or the Woods division two blocks away (a conservative assumption and one that cannot hold for all directions simultaneously), there would be approximately 170 additional coaches passing through this intersection daily on weekdays. During the PM peak hour there would be about three additional coaches passing through this intersection. Coaches heading for the western or southwestern portions of the City would use I-280, located adjacent to the site. They would pass through none of the congested intersections.[1]

Coaches heading for the southeastern portion of the City would travel south along Third Street. (Most of these lines are currently assigned to the nearby Woods facility, and use much the same route that they would use in the future with the project.) They would pass through Third/Army, Third/Cargo, Third/Evans. Of these intersections, Third/Evans and Third/Army are expected to experience significant congestion in the future. Assuming that all MUNI coaches heading in these directions were assigned to either the proposed project or the Woods division two blocks away, there would be approximately 11 additional coaches passing through these intersections daily on weekdays. During the PM peak hour there would be no additional coaches.[1] These increases in traffic associated with the proposed Operating Division could not noticeably change intersection performance.

As a result of the reassignment of coaches to the project site, there would be a decrease of about 66 Operating Division coaches traveling through the intersection of Third/25th,[1] which may be operating at unacceptable levels of service in the future.

The project would also result in trips by coaches being repaired at the Central Maintenance Facility. This function is now performed at the Woods Division, at Indiana/23rd. As a worst case (assuming that all coaches are arriving from locations closer to Woods than to the proposed project) this would result in about two blocks being added to these 30 to 50 daily trips.[1]

About 190 day-shift maintenance and administrative employees would be at the site, most of whom are currently assigned to the Woods facility and the Army/Third Street facility. Although their trips to work would be altered somewhat by the project, they would not represent new trips to the area, and would not result in significant changes in any nearby intersections. About 150 bus operators would be assigned to the Operating Division. The largest numbers of bus driver trips are generally before 6 AM and after 7 PM. There would be approximately 475 total employees (maintenance, administrative and operators) over the course of a weekday (340 day shift, 126 swing shift, 7 night shift).

It is likely that a new traffic signal would be warranted at the point where vehicles leaving the site enter Army Street. (There are no existing traffic signals on Army Street adjacent to the site.) When site planning has advanced, and the access to the site designed, MUNI would work with DPW to develop appropriate signalization.

Transportation impacts associated with the project would not be significant relative to the existing capacity of the surrounding street system. The change in area traffic as a result of the project would be undetectable to drivers. The project's impact on area parking availability would also not be substantial.

Muni intends to provide employee parking on the site. Because final program and site design have not been determined, and number of parking spaces and the layout is not known. The site has a number of street frontages, where on-street parking is currently available. Most nearby uses provide some off-street parking for employees and visitors. It is unlikely that the project could result in a substantial change in the area's parking availability.

Air Quality. Construction work would temporarily raise particulate levels in the area. In order to mitigate this impact, any open holes would be watered. See Mitigation Measure 1, below.

The project would not result in new vehicle trips in the City or in the region, because the buses using the facility would be buses that are currently using other MUNI facilities, and the employees at the site would be current MUNI employees. The project would, however, result in new trips to the site which could result in air quality impacts in the vicinity of the project.

The Bay Area Air Quality Management District (BAAQMD) has established thresholds for projects requiring its review for potential air quality impacts. These thresholds are based on the minimum number of vehicle trips which the BAAQMD considers capable of producing air quality problems, primarily carbon monoxide in San Francisco. The project would not exceed this minimum standard as it would result in 1,445 daily vehicle trip ends to the site compared to the 2,000 daily vehicle trip end threshold that has been established by BAAQMD. For projects that exceed these thresholds a carbon monoxide analysis is generally prepared in San Francisco. An analysis of particulate emissions is not prepared because most of the particulate emissions in San Francisco result from sources other than from the operation of motor vehicles.

Because many of the trips would be made by buses that emit less carbon monoxide than do light duty vehicles, the carbon monoxide emissions would be less for this project than if all of the trips were made by the average San Francisco Bay Area vehicle mix. For example, if future project trips were made by the average Bay Area vehicle mix driving at speeds between 5 to 15 mph there would be about 4,400 to 4,800 grams per mile more carbon monoxide than if the specific vehicle mix for this project (480 bus trips, 965 other vehicle trips) were taken into account.[12,13] Therefore, no significant air quality impacts would be generated by the proposal.

Noise. The site is in an area with high ambient noise levels from the adjacent elevated freeway and from nearby industrial uses. Uses on the site, including diesel coaches, other vehicles and repair machinery would generate noise. Noise impacts are influenced by distance from those hearing the noise, and by the presence of intervening structures. Because the configuration of the uses on the site has not been determined, a precise calculation of noise levels is not possible. It is likely that noise from the project would be perceptable at the property lines. The closest sensitive receptors are the residences on Potrero Hill, across the freeway from the site. Because of the distance, and the existence of other intervening noise sources (especially the freeway), noise from the project would be attenauted, and would not result in significant noise impacts. Noise from the project would also be perceptable to pedestrians using the public access along Islais Creek which would be developed as part of the project. The character of this public access, as well as other public access along Islais Creek, would be influenced by the industrial nature of the area. In this context, the noise impacts of the project would not be significant.

The San Francisco Noise Ordinance (Article 29 of the Police Code) establishes standards for noise levels in the various zoning districts. It states that any "fixed source machinery or equipment, or similar mechanical device" may not exceed 75 dBA at any time in the M-2 district, measured at the property line of any affected lot. This ordinance would apply to any machinery used on the site. It would not apply to diesel coaches.

Public Services. The project would allow a consolidation of MUNI operations at a central location. It is intended to encourage more efficient MUNI operations, in an area without nearby incompatible land uses.

The project site is in a Special Geologic Study Area as shown in the Community Safety Element of the San Francisco Master Plan. This map indicates areas in which one or more geologic hazards exist with the potential for causing land movement or inundation.

The final building plans would be reviewed by the Bureau of Building Inspection (BBI). In reviewing building plans, the BBI refers to a variety of information sources to determine existing hazards and assess requirements for mitigation. Sources reviewed include maps of Special Geologic Study Areas and known landslide areas in San Francisco as well as the building inspectors'

working knowledge of areas of special geologic concern. If indicated by available information, BBI would require that site-specific soils reports be prepared, by a licensed soils engineer, prior to construction. Potential geologic hazards would be mitigated through the permit review process through these measures.

Hazards and Water Quality. A site history has been performed,[14] and site assessment performed by a contractor working under the direction of the Department of Public Health,[15] in order to determine whether past uses have resulted in the presence of hazardous material at the site. The conclusions of these studies are summarized here. The site history indicates that the site is in an area which was created by bayfill between the mid-1920s and the mid-1930s. Portions of the site have been used for a variety of industrial uses since the 1960s, including coconut oil processing, warehousing, fuel storage. Soil contaminated by past uses has been discovered on property to the west of the site (Federated Metals).[14] There is also some evidence of undocumented dumping activities on the site.

The site assessment included taking soil samples from 25 boreholes throughout the site, two samples from the surface, and two water samples from Islais Creek adjacent to the site. The tests revealed that contamination exists on the site. One location contains hydrocarbons well above levels which are considered hazardous waste. Other locations contain some lesser degree of contamination. Four have elevated hydrocarbon levels, although they are below the level which is considered hazardous waste. Additional testing of areas which may contain nickel contamination will be necessary to determine the appropriate clean-up methods. Several locations had elevated concentrations of nickel, or high pH levels. In addition, surface oil splotches were observed, which may contain hazardous levels of hydrocarbons, and which contain coconut oil from the Granex operations. The coconut oil appears to be non-hazardous. The water samples found detectable levels, at low tide only, of four contaminants: tetrachloroethene, tuoluene, arsenic, zinc. The consultant believes that the source is not on the project site.

In order to assure that hazardous materials on the site are properly handled, so that no impacts would result from construction on the site, MUNI, under the direction of the Department of Public Health, would carry out the following mitigation. All soil containing hazardous levels of hydrocarbons or metals would be removed and correctly disposed of as required by hazardous waste laws. Groundwater monitoring wells would be installed in order to characterize any groundwater contamination which may have resulted from this contamination. Any groundwater contamination discovered would be remediated as required by hazardous waste laws. Surface oil splotches would be remediated, by removing contaminated soils and properly disposing of it.

The portion of the site east of Indiana Street is located in the area subject to the ordinance "Analyzing Soil for Hazardous Wastes" which amends the Public Works Code. (Ordinance 253-86). That ordinance requires that the project sponsor for any grading work or future construction project on the site, which would involve the disturbance of 50 cubic yards or more of soil, conduct tests of the soil to determine the presence of hazardous materials as defined by State and Federal agencies, prepare a site history describing past uses on the site which would enable the Director of Public Health to require testing of the soils for additional hazardous materials, and complete a site mitigation plan to the satisfaction of the appropriate State or Federal agencies. These requirements must be met before a permit can be issued. The site assessment and mitigation described above satisfy this requirement.

The project would result in the use and storage of potentially hazardous materials. Diesel buses contain a number of fluids and materials which can result in hazards to public health or the environment if they are allowed to accumulate in water, in the soil, or to enter the sewer system. These fluids and materials include oil, gasoline, transmission fluid, radiator fluid, battery acids, lead parts, tires, solvents and cleaners, and brake pads. Fueling activities, maintenance activities and coach washing (particularly washing the undersides of buses) could, if not properly carried out, result in the discharge of hazardous materials to the air, soil or water. The following City and State laws and regulations are intended to assure that toxic materials and wastes are properly handled and do not result in hazards to public health and the environment:

State law and regulations of the California Department of Health Services regarding storage and disposal of hazardous wastes (Health & Safety Code Section 25100 et seq., Title 22, Cal. Admin. Code Sections 66001 et seq.).

San Francisco Hazardous Materials Permit and Disclosure Ordinance (Health Code Sections 1101-1199).

San Francisco flammable liquids containment permit requirements (Fire Code Sections 11.01-11.96)

San Francisco hazardous chemicals permit requirements (Fire Code Sections 13.01-13.13).

These laws and regulations are intended to insure that hazardous materials are properly handled, and that no hazardous materials would reach the Bay, accumulate in the soil, enter the sewer system or be improperly deposited in a landfill. MUNI would comply with all applicable codes when designing or operating the facilty. Underground tanks would be installed to hold diesel fuel, engine oil, automatic transmission fluid, engine coolant, waste oil, waste coolant. All tanks and associated piping would include secondary containment, with leak monitoring systems, as required by the Hazardous Materials Permit and Disclosure Ordinance. In addition, Muni has installed a centralized computerized leak monitoring system serving all of its facilities.[16] It is also Muni's policy to install new tanks in vaults.[17] These two actions are intended to further assure that tanks do not leak, resulting in soil or water contamination.

Bus parking and circulation areas would be paved with impervious materials, and be adequately drained, to assure that contaminants would not enter the soil. Maintenance bays, fueling islands, the bus washing facility and all yard surfaces would contain drains with oil/water separators to assure that oil would not enter Islais Creek or the sewer system. Water used in the steam cleaning of buses, which could contain concentrations of heavy metals from the lubricants used in bus operation, would be collected in settling chambers. This water would than be strained through stainless steel strainers. The strained material, if found to contain unacceptable levels of heavy metals or other contaminants, would be disposed of as hazardous waste.[16a] Spill control stations, with adequate capacity for clean-up, would be located near all areas where hazardous materials are used or stored.[17] These features of the design, collectively refered to as Mitigation Measure 3, would assure that the hazardous materials used as part of the project would not result in a significant impact on the environment.

Cultural. All buildings and structures on the site would be demolished. There are no buildings on the site which have been identified as historical resources. The site history concluded that "there is a slight possibility that prehistoric archaeological remains may once have existed" on the site, but that there is "little likelihood" of recovering historic cultural resources.[15] In order to mitigate this potential impact the sponsor has agreed to implement mitigation measure 4.

While local concerns or other planning considerations may be grounds for modification or denial of the proposal, there is no substantial evidence that the project could have a significant effect on the environment.

NOTES

1. Joan Lundstrom, Permit Analyst, BCDC, phone conversation, March 30, 1989.

2. Charles Mitchell, Chief Wharfinger, Port of San Francisco, phone conversation, March 30, 1989.

3. Julia Viera, Friends of Islais Creek, phone conversation, March 31, 1989.

4. Bureau of Traffic Engineering and Operations, Islais Creek Interchange Traffic Study, 1988, p.26. (DCP file No. 87.413E)

5. U.S. Department of the Navy, FEIS: Homeporting--Battleship Battlegroup/ Cruiser Destroyer Group, 1987, pp. 5-58, 5-92a. (DCP file No. 86.173E)

6. Bureau of Traffic Engineering and Operations for the San Francisco Clean Water Program, Islais Creek Facilities Traffic Study, Draft Report, 1988, p.23. (DCP file No. 87.664E)

7. DeLeuw-Cather for the San Francisco Clean Water Program, Mariposa Facilities Traffic Study, Final Report, 1988, p.29. (DCP file No. 87.663E)

8. Renato Martinez, P.E. Pier 70 Container Freight Station Traffic Report, 1986, p. 11. (DCP file No.85.123 E)

9. Transportation Study, San Francisco Newspaper Agency Production Plant, 1987.

10. Level of Service ratings range from A to F, with A representing the best conditions. Intersections operate at acceptable conditions through LOS D, with increasing deterioration thereafter.

11. Susan Chelone, MUNI, March 14, 1989 memo, available in project file.

12. Tosh Mangut, of the Bay Area Air Quality Management District, telephone conversation with Sally E. Maxwell of the Office of Environmental Review, May 1, 1989. In the year 2000, buses would emit 29.76 grams (g) per mile at 5 mph, 20.52 g/mile at 10 mph and 14.31 g/mile at 15 mph.

13. Bay Area Air Quality Management District, Air Quality and Urban Development, Guidelines for Assessing Impacts of Projects and Plans, revised April 27, 1989, p. VI-12.

14. Archeo-Tec, The Woods Annex Facility, San Francisco, California: A Site History, March 8, 1989.

15. Crosby & Overton, Inc., Preliminary Site Assessmend of Wood's Annex Site, n.d.

16. Larry James, MUNI, Phone conversation, March 6, 1989.

16a. Bill Nielson, MUNI, Phone conversation, June 20, 1989.

17. Bruce Bernhard, MUNI, Phone conversation, March 6, 1989.

MITIGATION MEASURES

1. Air quality. In order to assure that the project would not result in an increase in a fine particulate matter (PM_{10}) level above acceptable levels in the area, the area under construction would be watered twice daily. This is required by the Bureau of Building Inspection and would be enforced by the Building Inspectors as part of their responsibilities.

2. Clean up of existing site contamination. In order to assure that existing contamination on the site would not result in significant impacts, all soil containing hazardous levels of hydrocarbons or metals would be removed and correctly disposed of as required by hazardous waste laws. Groundwater monitoring wells would be installed in order to characterize any groundwater contamination which may have resulted from this contamination. Surface oil splotches would be remediated, by removing contaminated soil and properly disposing of it. Before a building permit is issued by the Bureau of Building Inspection, Muni would submit a report to the Department of Public Health and the Department of City Planning showing that all hazardous materials have been removed from the site and correctly disposed of.

3. Handling of hazardous materials used during project operation. Muni would comply with all applicable laws and regulations governing the handling of hazardous materials on the site. In order to assure that the use of hazardous materials used during project operation would not result in significant impacts, the following design features would be incorporated into the project. All underground tanks and associated piping would include secondary containment, with leak monitoring systems, as required by the Hazardous Materials Permit and Disclosure Ordinance. In addition, Muni has installed a centralized computerized leak monitoring system serving all of its facilities. It is also Muni's policy to install new tanks in vaults. These two actions would further insure that tanks do not leak, resulting in soil or water contamination. Bus parking and circulation areas would be paved with impervious materials, and be adequately drained, to assure that contaminants would not enter the soil. Maintenance bays, fueling islands, the bus washing facility and all yard surfaces would contain drains with oil/water separators to assure that oil would not enter Islais Creek or the sewer system. Water used in the steam cleaning of buses, which could contain concentrations of heavy metals from the lubricants used in bus operation, would be collected in settling chambers. This water would then be strained through stainless steel strainers. The strained material, if found to contain unacceptable levels of heavy metals or other contaminants, would be disposed of as hazardous waste. Spill control stations, with adequate capacity for clean-up, would be located near all areas where hazardous materials are used or stored. Before an occupany permit is issued by the City, Muni would submit a report to the Department of Public Health and the Department of City Planning containing a plan for the handling and disposal of hazardous materials as at the facility.

4. Prehistoric cultural resources. Should evidence of cultural or historic artifacts or features of potential significance be found during project excavation, the Environmental Review Officer (ERO) and the President of the Landmarks Preservation Advisory Board (LPAB) would be notified immediately, and any excavation which could damage such artifacts or features halted. The project sponsor would select an archaeologist to assist the Office of Environmental Review in determining the significance of the find. The archaeologist would prepare a report to be submitted to the ERO and the President of the LPAB containing an assessment of the potential sigificance of the find and recommendations for what measures should be implemented, including an appropriate security program, and a program for the preservation and recovery of any potential artifacts/features. The ERO would then recommend specific mitigation measures, including submittal of written reports to the ERO, if necessary. Excavation or construction activities which might damage discovered cultural resources would be suspended for a total maximum of four weeks over the course of construction to permit inspection, recommendation and retrieval, if appropriate.

The archaeologist would prepare a draft report documenting the artifacts/features that were discovered, an evaluation as to their significance, and a description as to how any archaeological testing, exploration and/or recovery program was conducted. Copies of draft reports prepared according to these mitigation measures would be sent first and directly to the Environmental Review Officer and to the President of the Landmarks Preservation Advisory Board for review. Following approval of the report by the ERO and the President of LPAB, a final report is to be sent to the California Archaeological Site Survey Office at Sonoma State University, the Foundation for San Francisco's Architectural Heritage and the State Office of Historic Preservation. The Office of Environmental Review shall receive three final copies of the final archaeological findings report.

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 88.700ER Title: MUNI facility at Army and Indiana

Street Address: Army/Indiana Streets Assessor's Block/Lot: 4379-4382, 435:

Initial Study Prepared by: Catherine Bauman

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS	Not Applicable	Discuss
1) Discuss any variances, special authorizations, or changes proposed to the City Planning Code or Zoning Map, if applicable.	—	X
*2) Discuss any conflicts with any adopted environmental plans and goals of the City or Region, if applicable.	X	—

B. ENVIRONMENTAL EFFECTS - Could the project:	YES	NO	DISCUSSED
1) Land Use			
*(a) Disrupt or divide the physical arrangement of an established community?	—	X	—
*(b) Have any substantial impact upon the existing character of the vicinity?	—	X	—
2) Visual Quality			
*(a) Have a substantial, demonstrable negative aesthetic effect?	—	X	X
(b) Substantially degrade or obstruct any scenic view or vista now observed from public areas?	—	X	—
(c) Generate obtrusive light or glare substantially impacting other properties?	—	X	—
3) Population			
*(a) Induce substantial growth or concentration of population?	—	X	—
*(b) Displace a large number of people (involving either housing or employment)?	—	X	—
(c) Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?	—	X	—
4) Transportation/Circulation			
*(a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?	—	X	X
(b) Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?	—	X	X
(c) Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	—	X	—
(d) Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	—	X	X
5) Noise			
*(a) Increase substantially the ambient noise levels for adjoining areas?	—	X	X
(b) Violate Title 24 Noise Insulation Standards, if applicable?	—	X	—
(c) Be substantially impacted by existing noise levels?	—	X	—

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

	YES	NO	DISCUSSED
6) Air Quality/Climate			
*(a) Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	—	X	X
*(b) Expose sensitive receptors to substantial pollutant concentrations?	—	X	—
(c) Permeate its vicinity with objectionable odors?	—	X	—
(d) Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	—	X	—
7) Utilities/Public Services			
*(a) Breach published national, state or local standards relating to solid waste or litter control?	—	X	—
*(b) Extend a sewer trunk line with capacity to serve new development?	—	X	—
(c) Substantially increase demand for schools, recreation or other public facilities?	—	X	—
(d) Require major expansion of power, water, or communications facilities?	—	X	—
8) Biology			
*(a) Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	—	X	—
*(b) Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	—	X	—
(c) Require removal of substantial numbers of mature, scenic trees?	—	X	—
9) Geology/Topography			
*(a) Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	—	X	X
(b) Change substantially the topography or any unique geologic or physical features of the site?	—	X	—
10) Water			
*(a) Substantially degrade water quality, or contaminate a public water supply?	—	X	X
*(b) Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?	—	X	—
*(c) Cause substantial flooding, erosion or siltation?	—	X	—
11) Energy/Natural Resources			
*(a) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	—	X	—
(b) Have a substantial effect on the potential use, extraction, or depletion of a natural resource?	—	X	—
12) Hazards			
*(a) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?	—	X	X
*(b) Interfere with emergency response plans or emergency evacuation plans?	—	X	—
(c) Create a potentially substantial fire hazard?	—	X	—
13) Cultural			
*(a) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?	—	X	X
(b) Conflict with established recreational, educational, religious or scientific uses of the area?	—	X	—
(c) Conflict with the preservation of buildings subject to the provisions of Article 10 or Article 11 of the City Planning Code?	—	X	—

C. OTHER	YES	NO	DISCUSSED
Require approval and/or permits from City Departments other than Department of City Planning or Bureau of Building Inspection, or from Regional, State or Federal Agencies?	X		X

D. MITIGATION MEASURES	YES	NO	N/A	DISCUSSED
1) If any significant effects have been identified, are there ways to mitigate them?	X			
2) Are all mitigation measures identified above included in the project?	X			

E. MANDATORY FINDINGS OF SIGNIFICANCE	YES	NO	DISCUSSED
*1) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or pre-history?		X	
*2) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?		X	
*3) Does the project have possible environmental effects which are individually limited, but cumulatively considerable? (Analyze in the light of past projects, other current projects, and probable future projects.)		X	
*4) Would the project cause substantial adverse effects on human beings, either directly or indirectly?		X	

F. ON THE BASIS OF THIS INITIAL STUDY

___ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared by the Department of City Planning.

X I find that although the proposed project could have a significant effect on the environment, there there WILL NOT be a significant effect in this case because the mitigation measures, numbers 1-4, in the discussion have been included as part of the proposed project. A NEGATIVE DECLARATION will be prepared.

___ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Barbara W. Sahm

BARBARA W. SAHM
Environmental Review Officer
for

DEAN L. MACRIS
Director of Planning

DATE: May 5, 1959

BWS:eh
DER:23

AIR QUALITY MODELING ANALYSIS OF PROPOSED INCREASES IN VEHICLE EMISSIONS ASSOCIATED WITH THE MUNI RAILWAY ISLAIS CREEK FACILITY DEVELOPMENT

(DRAFT)

Prepared for:

GANNETT FLEMING

Prepared by:

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1.0 INTRODUCTION

This report documents an air quality modeling analysis of anticipated vehicle carbon monoxide (CO) emissions associated with the relocation of the San Francisco Municipal Railway (MUNI) Kirkland garage to a site near Islais Creek . MUNI is proposing to relocate the operating garage and construct new ancillary facilities at a site at Army and Indiana Streets in San Francisco. The new site is called the Islais Creek site. Emissions due to the relocation will occur from diesel bus traffic to and from the maintenance facility and from personal automobiles of staff employed at the Islais Creek site. The expected vehicle traffic information that forms the basis of this modeling analysis is contained in a MUNI memorandum from Susan Chelone to Catherine Bauman dated 14 March 1989 (Chelone, 1989).

Once the Islais Creek facilities are developed, a maximum increase of 231 diesel buses will pass the Army Street - Evans Street intersection in a 24 hour weekday period. The maximum hourly increase in buses for this intersection will be 71 for the hour 0700-0800. A maximum of 20 diesel buses per hour is expected to pass the Army Street – Third Street intersection for the same peak hourly period. MUNI also estimates that approximately 100 light duty vehicle trips will be associated with the Islais Creek facility during the morning and evening rush hour period.

The pollutant of concern for this modeling study is CO. The average CO emission rate for the urban diesel buses and light duty gasoline vehicles were estimated from the current California Air Resources Board (ARB) emission factor model, EMFAC7F -Version 1.1 (ARB, 1994) for the year 1996. These emissions were input to the CALINE3 (Benson, 1979) air quality dispersion model to estimate the incremental 1-hour and 8-hour worst-case impacts of increased traffic resulting from the relocation. The modeled worst-case 1-hour and 8-hour impacts were then added to estimates of CO background concentrations near the Islais Creek site to yield estimates of the 1-

hour and 8-hour CO ambient concentrations resulting proposed operations at the Islais Creek facility.

Based on the air quality modeling results obtained in this study, the worst-case 1-hour and 8-hour CO increases associated with vehicle CO emissions from the relocated facility are estimated to be negligibly different from the ambient background values. The peak CO concentration increase due to the proposed facility is modeled to be less than 0.04 ppm for both the 1-hour and the 8-hour averaging periods for each of the years 1996, 2005, and 2015. When the modeled concentrations are added to conservative (high) estimates of background concentrations representative of the Islais Creek site and then rounded to two significant digits, the peak 1-hour and 8-hour concentrations are estimated to be 7.0 ppm and 5.1 ppm, respectively. These modeled impacts are identical to the background concentrations. As the current monitoring data indicate compliance with the 1-hour and 8-hour CO National Ambient Air Quality Standards (NAAQS), operations at the proposed Islais Creek facility are not modeled to cause an exceedance of the NAAQS for either the 1-hour or 8-hour period.

2.0 EMISSION FACTOR DEVELOPMENT

The emission factors for diesel buses and light duty automobiles were estimated using the EMFAC7F emission factor model (Version 1.1). The EMFAC7F model was run in a default mode using the 1996 test case provided by the ARB with the model. For urban diesel buses, a fleet average speed of 15 miles per hour (mph) was assumed. In EMFAC7F, urban bus CO emissions are not dependent upon temperature. Using the above assumptions, the fleet average emission factor for CO for an urban diesel bus is 33.0 grams per mile (g/mi) for 1996. This emission factor is a conservative (high) estimate of diesel bus emissions since in future years, clean diesel technology will lead to a reduction in emissions from diesel buses.

Light duty automobile CO emissions are dependent upon temperature. For estimating emissions of CO from the personal automobiles, a wintertime temperature of 50 F was assumed. Since at low speeds, CO emissions from light duty vehicles have an inverse relationship to vehicle speed, a slow speed of 15 mph was assumed. Using the two above assumptions, and assuming emissions would occur from catalyst-equipped vehicles, the EMFAC7F fleet-average CO emission factor for 1996 for light duty automobiles is 4.82 g/mi. A copy of the applicable output of EMFAC7F for the two above emission factors is given in Appendix A.

3.0 DETERMINATION OF COMPLIANCE WITH AIR QUALITY STANDARDS

The NAAQS for CO are 20.0 ppm for the 1-hour period and 9.0 ppm for the 8-hour period. These two concentrations can be equaled but not exceeded. The peak 1-hour and 8-hour concentrations due to the increased bus traffic from the Islais Creek facility were estimated from the peak 1-hour modeled concentration plus an appropriate background concentration. The 8-hour modeled concentration was estimated from the maximum 1-hour concentration by application of a multiplicative factor, as recommended by the United Stated Environmental Protection Agency (U.S. EPA) (U.S. EPA, 1990).

U.S. EPA recommends that the factor should be equal to the ratio of the peak 8-hour concentration and the peak 1-hour concentration within the given peak 8-hour period (U.S. EPA , 1990). A generally conservative and more easily estimated ratio can be computed as the ratio of the two peak values for any period during the year. In this method, used for this study, the ratio of the two independent peak 8-hour and 1-hour concentrations over a three year period were used to estimate the 8-hour to 1-hour concentration ratio. As it turned out, as discussed below, the estimated ratio was identical to the U.S. EPA recommended default value of 0.7.

Ambient CO monitoring data are available for San Francisco at two monitoring sites operated by the Bay Area Air Quality Management District (BAAQMD). These two sites are located at 939 Ellis Street and 10 Arkansas Street. The site closest to the Islais Creek site is the Arkansas monitor. Consequently, data from the Arkansas monitor were used to estimate the peak 1-hour and 8-hour CO concentrations and the concentration ratio for the two averaging periods. For the three year period 1993-1995, the peak 8-hour and 1-hour CO concentrations were 5.1 ppm and 7.0 ppm, respectively. The ratio of these two values is 0.7. A copy of the ambient air quality data summary from which the above ratio was estimated is given in Appendix B.

To estimate the maximum expected 1-hour concentration, the observed 3-year peak 1-hour concentration at the Arkansas monitor (7.0 ppm) was added to the modeled maximum 1-hour concentration. For the 8-hour period, the modeled maximum 1-hour concentration was multiplied by 0.7 and then added to the 3-year peak 8-hour concentration (5.1 ppm). The use of the 3-year peak 1-hour and 8-hour concentrations to represent "background" CO concentrations results in a conservative (high) estimate of background CO concentrations near the Islais Creek site.

4.0 MODELING METHODOLOGY

Modeling was performed for the years 1996, 2005, and 2015. As a conservative estimate of CO emissions, CO emission factors valid for 1996 were used to model emissions for each of the three years. These emission factors were obtained from the current EMFAC7F (Version 1.1) emission factor model developed by the ARB. Under ARB and U.S. EPA regulations, CO emissions from diesel buses and light duty automobiles will decrease in the future from those that are occurring in 1996. The use of 1996 emission factors therefore results in a conservative (high) estimate of emissions for future years.

As emissions of CO from motor vehicles decline in future years due to the implementation of new regulations, ambient levels of CO are also expected to decrease. However, for this analysis no rollback (reduction) in the background CO concentrations was made, thus yielding a conservative (high) estimate of future background 1-hour and 8-hour CO concentrations.

There will be an unknown amount of growth in vehicle traffic in San Francisco between 1996 and 2015. However, given the current traffic congestion in the city, growth in vehicle miles traveled will be somewhat limited. For the purpose of this study, it was assumed that the annual growth in vehicle miles traveled (VMT) would be 2%. Using this assumption, the compounded VMT growth factors from a base year of 1996 were 1.20 for 2005 and 1.46 for 2015. These two growth factors were therefore used to estimate the emissions for the two future years.

The CALINE3 model is the dispersion model recommended by the U.S. EPA for CO intersection modeling in non-complicated situations (U.S. EPA, 1996). CALINE3 was used for the modeling for this study. As recommended by U.S. EPA, worst case meteorological conditions were input to CALINE3. Because the Islais Creek facility is in an urban area, the appropriate worst case conditions are a 1.0 meter/second (m/s) wind speed, a stability class of D, and a mixing height of 1000 meters (m) (U.S. EPA, 1990). Wind directions were varied in 10 increments from 10 to 360 . The surface roughness appropriate for urban areas is 320 centimeters (cm) for the urban

core and 175 cm for urban areas outside the urban core. Because the buildings near the Islais Creek site are generally two to three story buildings, the 175 cm surface roughness length is appropriate for this modeling study. A limited sensitivity analyses performed for this study indicates that the CALINE3 model is relative insensitive to roughness length for the two values examined and for the specific receptors chosen.

The largest increase in bus traffic from the Islais Creek site will occur on Army Street and on Third Street. Both these streets are multiple lane roads with two lanes in each direction. For this modeling, a roadway width of 30 meters (m) was used. This width includes a 3 m buffer on each side of the traffic lanes. A limited sensitivity analyses performed for this study indicates that the CALINE3 model is relative insensitive to a road width between 20 m and 30 m for the specific receptors chosen for this study.

Figure 1 presents a simplified plot plan of the roadway links and receptors that were used in the modeling. Four roadway links, two representing Army Street and two representing Third Street were modeled. These links are straight segments of the roadway adjacent to the selected modeling receptors and for which MUNI estimated the potential increase in bus traffic. The two Army Street links will have a peak 1-hour bus traffic increase of 71 buses per hour. The two Third Street links will have a peak 1-hour increase of 20 buses per hour. The projected personal vehicle traffic rush hour increase of 100 vehicles per hour was equally divided between the two sets of links (i.e., 50 vehicles per hour for each set).

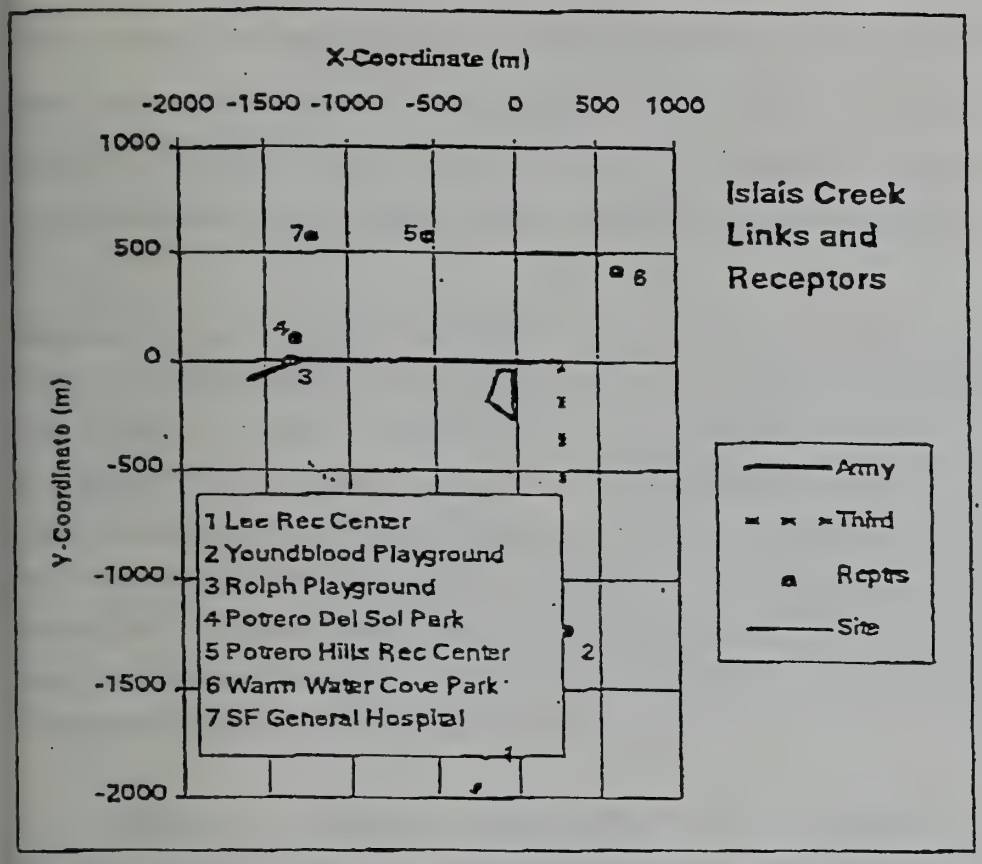

Figure 1. Islais Creek Air Quality Modeling Plot Plan

The receptors chosen for analysis in this study are sensitive receptors. Sensitive receptors are those locations (schools, hospitals, parks, residences, etc.) where the general public has access, where children or sensitive individuals may be located, and/or where people may congregate. Because of the generally urban/industrial nature of the Islais Creek site, there are no schools or residences adjacent to the site or those portions of Army or Third Streets adjacent to the site. Based on a street map of San Francisco, San Francisco General Hospital and six parks and recreation centers are within about 500 m of Army or Third Streets adjacent to the Islais Creek site. Modeling receptors were therefore placed at the hospital and at six parks or recreation centers (See Figure 1). The height of all receptors was 1.8 m, as recommended by U.S. EPA.

In the CALINE3 model, the modeled concentrations are linear with the input vehicle activity (given in vehicles per hour [VPH]) and the emission rate from an individual vehicle. Because of this linearity, common modeling practice allows for the input

into CALINE3 of standardized, or "unit", emission rates and VPH data. The output "unit" concentrations are then multiplied in a post-processing step by the ratio of the actual to modeled values to yield the expected impacts. This accepted modeling practice was followed in the CALINE3 modeling performed for this study.

Because of the low vehicle activity (71 buses per hour for the peak period), a "unit" VPH of 10,000 and a "unit" emission factor of 100 g/mi were modeled for the two sets of links to yield a usable number of significant figures in the CALINE3 output. The true VPH and emission factors were significantly less, as discussed above. To obtain final modeling results, the output unit concentrations for both sets of links for both the buses and the light duty vehicles were multiplied by the ratio of the modeled and actual VPH and emission rates for each link and vehicle type. The spreadsheet page on which the adjusted modeled concentrations were developed from the unit concentrations is given in Appendix D.

All additional modeling methodology not discussed above followed recommendations given in the CALINE3 user's guide and the U.S. EPA "Guideline for Modeling Carbon Monoxide from Roadway Intersections".

5.0 MODELING RESULTS

Modeling results are given in Table 1 for the three years modeled: 1996, 2005, and 2015. As discussed above, the highest concentrations are expected to occur in 1996 as the future years are expected to benefit from regulatory-required decreases in CO emissions and the resulting decrease in ambient CO concentrations. Because these expected future year reductions in CO emissions and ambient background concentrations were not included in this analysis, the estimated concentrations are conservative (high) estimates of expected CO concentrations.

The worst-case 1-hour and 8-hour CO increases associated with vehicle CO emissions from the relocated facility are estimated to be negligibly different from the ambient background values for all three years. The peak CO concentration increase due to the proposed facility is modeled to be less than 0.04 ppm for both the 1-hour and the 8-hour averaging periods for each of the years 1996, 2005, and 2015 (see Table 1). These modeling results are based on an assumed annual growth rate in vehicle miles traveled of 2 percent. While the true growth rate is unknown, the compounding of a 2 percent rate until 2015 (19 years) produces an increase in motor vehicle traffic of approximately 1.5, a value that will be somewhat difficult to achieve given the existing traffic congestion in San Francisco. Because of the very low incremental impacts modeled, the assumed vehicle growth rate does not materially affect the conclusions of this modeling study.

AGS

Table 1. CO Modeling Results for Islais Creek Master Plan

Modeled Year 1996

Receptor	Incremental Increase (ppm)		Total Concentration (ppm)	
	1-Hr	8-Hr	1-Hr	8-Hr
Lee Rec Center	0.017	0.012	7.02	5.11
Youndblood Playground	0.002	0.001	7.00	5.10
Rolph Playground	0.026	0.019	7.03	5.12
Potrero Del Sol Park	0.003	0.002	7.00	5.10
Potrero Hill Rec Center	0.001	0.000	7.00	5.10
Warm Water Cove Park	0.000	0.000	7.00	5.10
SF General Hospital	0.001	0.000	7.00	5.10

Modeled Year 2005

Receptor	Incremental Increase (ppm)		Total Concentration (ppm)	
	1-Hr	8-Hr	1-Hr	8-Hr
Lee Rec Center	0.020	0.015	7.02	5.11
Youndblood Playground	0.002	0.001	7.00	5.10
Rolph Playground	0.031	0.022	7.03	5.12
Potrero Del Sol Park	0.004	0.003	7.00	5.10
Potrero Hill Rec Center	0.001	0.001	7.00	5.10
Warm Water Cove Park	0.000	0.000	7.00	5.10
SF General Hospital	0.001	0.001	7.00	5.10

Modeled Year 2015

Receptor	Incremental Increase (ppm)		Total Concentration (ppm)	
	1-Hr	8-Hr	1-Hr	8-Hr
Lee Rec Center	0.024	0.018	7.02	5.12
Youndblood Playground	0.002	0.002	7.00	5.10
Rolph Playground	0.037	0.027	7.04	5.13
Potrero Del Sol Park	0.004	0.003	7.00	5.10
Potrero Hill Rec Center	0.001	0.001	7.00	5.10
Warm Water Cove Park	0.000	0.000	7.00	5.10
SF General Hospital	0.001	0.001	7.00	5.10

Assumptions:

1-Hour CO Standard	30	ppm
8-Hour CO Standard	9	ppm
Background 1-Hr CO	7.0	ppm
Background 8-Hr CO	5.1	ppm
Annual VMT Growth Rate	2%	

No rollback of ambient concentrations or vehicle emission factors for future years.

Background concentrations are for the Arkansas Street monitor and are the highest
values measured for the years 1993-1995.

When the modeled concentrations due to emissions from diesel buses and personal automobiles are added to background concentrations representative of the Islais Creek site and then rounded to two significant digits, the peak 1-hour and 8-hour concentrations are 7.0 ppm and 5.1 ppm, respectively. These modeled impacts are identical to the background concentrations. As the current monitoring data indicate compliance with the 1-hour and 8-hour CO NAAQS, operation of the Islais Creek facility is not modeled to cause an exceedance of the NAAQS for either the 1-hour or 8-hour period.

6.0 REFERENCES

ARB (1994). "EMFAC7F Model, Version 1.1. California Air Resources Board, Technical Support Division, Mobile Source Emissions Inventory Branch, Sacramento, CA.

Benson, P. (1979). "CALINE3 - A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets." Report No. FHW-A/CA/TL-79/23. California Department of Transportation, Office of Transportation Laboratory, Sacramento, CA, November.

Chelone, S. (1989). San Francisco Municipal Railway Memorandum Titled "Traffic Impact, Proposed Islais Division of the Muni-Railway", To Catherine Bauman, 14 March 1989.

U.S. EPA (1990). "Guideline for Modeling Carbon Monoxide from Roadway Intersections," EPA-454/R-92-005, Office of Air Quality Planning and Standards, Research Triangle Park, NC, October.

U.S. EPA (1996). "Guideline on Air Quality Models", 40 CFR Parts 51 and 52, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July.

APPENDIX A

EMFAC7F 1996 Default Emission Factors

1 EMFAC7F EMISSION FACTORS
YEAR: 1996-STATEWIDE

RUN DATES: REPORT 12/13/93

TABLE 1: WINTERTIME RUNNING I/M EXHAUST EMISSION FACTORS AT 50 DEG F

POLLUTANT NAME: TOTAL ORGANIC GASES — UNITS: GRAMS PER MILE

SPEED	LIGHT DUTY AUTOS			LIGHT DUTY TRUCKS			MD. DUTY TRUCKS		HEAVY DUTY TRUCKS			URBAN BUS	MCY
MPH	NCAT	CAT	DIESEL	NCAT	CAT	DIESEL	NCAT	CAT	NCAT	CAT	DIESEL	DIESEL	ALL
5	29.42	1.23	0.93	23.02	1.71	0.89	23.60	2.35	17.00	3.60	6.69	10.69	9.60
10	16.05	0.57	0.73	12.77	0.80	0.69	13.16	1.12	11.14	2.36	5.25	8.39	5.06
15	11.53	0.40	0.39	9.37	0.56	0.51	9.70	0.78	7.61	1.61	4.21	6.74	3.56
20	9.42	0.31	0.48	7.72	0.48	0.45	8.03	0.66	5.42	1.15	3.46	5.53	2.89
25	8.07	0.32	0.40	6.66	0.45	0.38	6.88	0.62	4.02	0.83	2.90	4.63	2.47
30	7.03	0.29	0.35	5.71	0.41	0.32	5.92	0.57	3.11	0.66	2.49	3.97	2.16
35	6.21	0.26	0.30	5.01	0.37	0.29	5.16	0.51	2.51	0.53	2.18	3.48	1.91
40	5.65	0.22	0.27	4.51	0.31	0.26	4.66	0.43	2.11	0.45	1.95	3.12	1.73
45	5.33	0.18	0.25	4.28	0.26	0.23	4.40	0.36	1.85	0.39	1.79	2.86	1.62
50	5.17	0.17	0.23	4.16	0.23	0.22	4.29	0.33	1.69	0.36	1.67	2.67	1.58
55	4.94	0.18	0.22	3.93	0.25	0.21	4.03	0.36	1.69	0.36	1.80	2.56	1.52
60	5.32	0.23	0.22	4.92	0.41	0.21	5.01	0.57	1.69	0.36	1.57	2.50	1.33
65	10.65	0.87	0.22	8.29	1.27	0.21	8.45	1.63	1.65	0.35	1.57	2.50	0.92

POLLUTANT NAME: CARBON MONOXIDE — UNITS: GRAMS PER MILE

SPEED	LIGHT DUTY AUTOS			LIGHT DUTY TRUCKS			MD. DUTY TRUCKS		HEAVY DUTY TRUCKS			URBAN BUS	MCY
MPH	NCAT	CAT	DIESEL	NCAT	CAT	DIESEL	NCAT	CAT	NCAT	CAT	DIESEL	DIESEL	ALL
5	281.97	12.62	4.66	207.18	15.93	4.56	237.72	14.00	247.67	33.56	37.15	66.36	53.01
10	140.34	7.02	3.21	105.46	8.71	3.15	121.05	7.60	164.78	22.33	25.61	45.75	25.49
15	94.74	4.82	2.32	72.63	5.98	2.27	84.57	5.23	115.83	15.70	18.48	33.02	16.74
20	73.32	3.77	1.73	58.30	4.72	1.71	66.60	4.15	86.02	11.66	13.96	24.94	12.84
25	59.94	3.16	1.38	45.08	4.01	1.36	53.94	3.54	67.50	9.15	11.03	19.71	10.51
30	50.08	2.75	1.14	36.44	3.50	1.12	43.89	3.10	55.96	7.58	9.13	16.30	8.82
35	42.74	2.43	0.99	30.11	3.09	0.97	36.35	2.74	49.01	6.64	7.90	14.21	7.55
40	37.72	2.19	0.90	26.02	2.77	0.86	31.77	2.46	45.36	6.15	7.16	12.79	6.67
45	34.72	2.07	0.85	23.75	2.59	0.83	29.43	2.28	44.35	6.01	6.79	12.12	6.15
50	32.95	2.15	0.84	22.34	2.67	0.83	28.14	2.34	45.82	6.21	6.73	12.03	5.91
55	30.68	2.62	0.88	19.90	3.27	0.86	25.19	2.88	50.00	6.78	6.99	12.49	5.72
60	57.78	4.06	0.95	34.98	5.27	0.93	43.74	4.70	57.86	7.81	7.66	13.58	5.13
65	132.10	9.20	1.08	79.97	12.90	1.06	100.02	11.75	70.25	9.52	8.64	15.44	3.69

POLLUTANT NAME: OXIDES OF NITROGEN — UNITS: GRAMS PER MILE

SPEED	LIGHT DUTY AUTOS			LIGHT DUTY TRUCKS			MD. DUTY TRUCKS		HEAVY DUTY TRUCKS			URBAN BUS	MCY
MPH	NCAT	CAT	DIESEL	NCAT	CAT	DIESEL	NCAT	CAT	NCAT	CAT	DIESEL	DIESEL	ALL
5	2.75	1.17	2.20	2.48	1.58	2.03	2.48	2.73	5.61	3.42	29.49	32.95	0.82
10	2.74	0.87	1.83	2.67	1.18	1.69	2.57	2.04	5.90	3.60	17.00	27.38	0.74
15	2.79	0.69	1.67	2.75	0.96	1.45	2.64	1.63	6.18	3.77	14.61	23.50	0.76
20	2.87	0.58	1.60	2.78	0.79	1.29	2.69	1.35	6.47	3.94	13.01	20.93	0.83
25	2.96	0.51	1.29	2.79	0.69	1.19	2.72	1.19	6.75	4.12	12.01	19.32	0.92
30	3.04	0.48	1.21	2.79	0.65	1.14	2.75	1.12	7.04	4.29	11.48	18.47	1.01
35	3.12	0.48	1.22	2.82	0.67	1.13	2.79	1.15	7.32	4.46	11.38	18.30	1.09
40	3.19	0.54	1.26	2.86	0.74	1.16	2.83	1.27	7.61	4.64	11.68	18.79	1.14
45	3.28	0.63	1.34	2.98	0.86	1.23	2.90	1.49	7.89	4.81	12.43	19.99	1.19
50	3.82	0.76	1.47	3.49	1.04	1.36	3.39	1.79	8.16	4.98	13.69	22.03	1.25
55	5.03	0.92	1.68	4.59	1.27	1.55	4.45	2.19	8.46	5.16	15.61	25.16	1.39
60	6.24	1.13	1.99	5.67	1.55	1.84	5.52	2.68	8.74	5.33	18.50	29.76	1.72
65	7.44	1.37	2.44	6.78	1.88	2.25	6.59	3.25	9.03	5.50	22.69	36.49	2.32

Appendix B
Carbon Monoxide Annual Summary Data in San Francisco for 1993 through 1995

Annual Summary Statistics

Station Name	ARB Site #	Sample Year	Max hour conc in ppm	Max 8-hr conc in ppm	Average conc all hours	Average conc for daily max hr	Street Address
Ellis St.	9000303	1993	10.00	6.88	1.536	2.863	939 Ellis St.
Ellis St.	9000303	1994	7.50	5.26	1.276	2.354	939 Ellis St.
Ellis St.	9000303	1995	8.50	5.32	1.234	2.315	939 Ellis St.
Arkansas St.	9000306	1993	7.00	5.13	1.225	2.107	10 Arkansas St.
Arkansas St.	9000306	1994	5.80	4.40	0.849	1.622	10 Arkansas St.
Arkansas St.	9000306	1995	5.30	4.44	0.784	1.535	10 Arkansas St.

Note: 1995 data are preliminary

DKO - 11/20/96

Source: California Air Resources Board

Appendix C

CALINE3 Input File

```
Islais Creek, z0=175, 30m, D Stab     60.175.  0.  0.7   526.
1 LRC                  -0.20    -3.25   0.0034
2 YBP                   0.55    -2.35   0.0034
3 RB                   -2.55     0.00   0.0034
4 PDSP                 -2.50     0.20   0.0034
5 PHRC                 -1.00     1.10   0.0034
6 WWCP                  1.20     0.80   0.0034
7 SFGH                 -2.30     1.10   0.0034
CASE ONE (30m)      4 36
ARMY 1              AG -3.00 -0.15 -2.50  0.00 10000.100. 0..057
ARMY 2              AG -2.50  0.00  0.50  0.00 10000.100. 0..057
THIRD 1             AG  0.50  0.00  0.50 -1.10 10000.100. 0..057
THIRD 2             AG  0.50 -1.10 -0.30 -3.25 10000.100. 0..057
 1.  10.4 1000. 0.0
 2.  20.4 1000. 0.0
 3.  30.4 1000. 0.0
 4.  40.4 1000. 0.0
 5.  50.4 1000. 0.0
 6.  60.4 1000. 0.0
 7.  70.4 1000. 0.0
 8.  80.4 1000. 0.0
 9.  90.4 1000. 0.0
10.100.4 1000. 0.0
11.110.4 1000. 0.0
12.120.4 1000. 0.0
13.130.4 1000. 0.0
14.140.4 1000. 0.0
15.150.4 1000. 0.0
16.160.4 1000. 0.0
17.170.4 1000. 0.0
18.180.4 1000. 0.0
19.190.4 1000. 0.0
20.200.4 1000. 0.0
21.210.4 1000. 0.0
22.220.4 1000. 0.0
23.230.4 1000. 0.0
24.240.4 1000. 0.0
25.250.4 1000. 0.0
26.260.4 1000. 0.0
27.270.4 1000. 0.0
28.280.4 1000. 0.0
29.290.4 1000. 0.0
30.300.4 1000. 0.0
31.310.4 1000. 0.0
32.320.4 1000. 0.0
33.330.4 1000. 0.0
34.340.4 1000. 0.0
35.350.4 1000. 0.0
36.360.4 1000. 0.0
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Appendix D
Unit Modeling Results and Adjustment Factors

Model Results, 11/27/96

1996 Diesel Buses

	Receptor		Unadjusted Concentration (ppm) Army	Third	Total	Modeled Concentration ppm) 1-Hr	8-Hr
1	Lee Rec Center	LRC	0.6	16.9	17.5	0.013	0.009
2	Youndblood Playground	YBP	0.1	1.5	1.6	0.001	0.001
3	Ralph Playground	RP	9.9	0.1	10.0	0.023	0.017
4	Potrero Del Sol Park	PDSP	1.1	0.1	1.2	0.003	0.002
5	Potrero Hill Rec Center	PHRC	0.2	0.1	0.3	0.001	0.000
6	Warm Water Cove Park	WWCP	0.0	0.3	0.3	0.000	0.000
7	SF General Hospital	SFGH	0.2	0.1	0.3	0.001	0.000

1996 Personal Automobiles

	Receptor		Unadjusted Concentration (ppm) Army	Third	Total	Modeled Concentration (ppm) 1-Hr	8-Hr
1	Lee Rec Center	LRC	0.6	16.9	17.5	0.004	0.003
2	Youndblood Playground	YBP	0.1	1.5	1.6	0.000	0.000
3	Ralph Playground	RP	9.9	0.1	10.0	0.002	0.002
4	Potrero Del Sol Park	PDSP	1.1	0.1	1.2	0.000	0.000
5	Potrero Hill Rec Center	PHRC	0.2	0.1	0.3	0.000	0.000
6	Warm Water Cove Park	WWCP	0.0	0.3	0.3	0.000	0.000
7	SF General Hospital	SFGH	0.2	0.1	0.3	0.000	0.000

	1996		Incremental Increase (ppm)		Total Concentration (ppm)	
	Receptor		1-Hr	8-Hr	1-Hr	8-Hr
1	Lee Rec Center	LRC	0.017	0.012	7.017	5.112
2	Youndblood Playground	YBP	0.002	0.001	7.002	5.101
3	Rolph Playground	RP	0.026	0.019	7.026	5.119
4	Potrero Del Sol Park	PDSP	0.003	0.002	7.003	5.102
5	Potrero Hill Rec Center	PHRC	0.001	0.000	7.001	5.100
6	Warm Water Cove Park	WWCP	0.000	0.000	7.000	5.100
7	SF General Hospital	SFGH	0.001	0.000	7.001	5.100
	Ambient Standard (ppm)				30	9

		Diesel Buses			Personal Automobiles		
	Adjustment Factors	Modeled	Actual	Adj Factor	Modeled	Actual	Adj Factor
	VPH (Army)	10000	71	0.0071	10000	50	0.0050
	VPH (Third)	10000	20	0.0020	10000	50	0.0050
	Emission Factor (g/mi)	100	33	0.33	100	4.8	0.048
	8-hr:1-hr ratio			0.73			0.73
	Background 1-Hr (ppm)			7.0			7.0
	Background 8-Hr (ppm)			5.1			5.1

PORT OF SAN FRANCISCO

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MEMORANDUM

December 11, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to execute Contract Modification No. 3 for Construction Contract No. 2611, "Ferry Plaza and Piers 27 & 29, Earthquake Repair Project, Pile and Deck Repair", with San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipelines, a Joint Venture.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO EXECUTE CONTRACT MODIFICATION NO. 3 FOR CONTRACT 2611, IN THE ADDITIONAL SUM OF $654,917, TO SAN LUIS GONZAGA/RANGER PIPELINES/BAY PACIFIC PIPELINES, A JOINT VENTURE

The 1989 Loma Prieta earthquake caused structural damage to the Ferry Plaza and Piers 27 & 29. To remedy the seismic damage, the Port sought bids for Contract No. 2611, "Ferry Plaza and Piers 27 & 29, Earthquake Repair Project, Pile and Deck Repair." The scope of work included seismic repairs and mitigation work on the battered (non-vertical) piles on these facilities (Ferry Plaza and Piers 27 & 29). The repairs at the Ferry Plaza were most critical due to its location directly over the BART trans-bay tube. Seven bids were submitted to the Port, ranging in price from $4,659,000 to $13,304,000. On September 26, 1995, the Port Commission awarded Contract No. 2611 to the lowest bidder, San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipelines, a Joint Venture ("Contractor") for $4,659,000, with a $470,000 contingency for possible contract modifications. FEMA and OES agreed to fund the initial contract amount. As work proceeded, it was necessary to modify the contract due to differing site conditions and the need for additional materials beyond original estimates, as described below.

Two previous contract modifications, summarized below, were within the initial contract contingency amount.

CONTRACT MODIFICATION NO. 1 $ 13,501

The first contract modification resulted from unforeseen conditions discovered during the repair of three broken vertical piles at Pier 27 & 29. The additional work included placement of rebar, pile jackets, and underwater excavation to uncover the base of the piles.

CONTRACT MODIFICATION NO. 2 $428,939

During the actual work, the actual quantities of grouting for deck repairs at the Ferry Plaza and Pier 27 substantially exceeded that estimated in the Port contract documents. Port staff verified the need for the additional grouting and the contractor's actual performance of the work.

These two contract modifications totaled $442,440, which was within the contingency fund of $470,000 previously authorized by the Commission.

CONTRACT MODICATION NO. 3 $654,917

This modification is the subject of the current Commission agenda item. Contract Modification No. 3 is required to authorize payment for additional work caused by unforeseen site conditions described as follows.

On May 2, 1996, the Contractor submitted a letter to the Port, requesting a modification of the contract. The major reason for the request was that the batter angle and polar orientation of the batter piles were different from those shown on the contract plans, which all contractors had used to prepare their bids. On June 19, 1996, the Port rejected the Contractor's request. At that time, Port staff did not believe that the pile batter/polar orientation discrepancy made a material difference. On October 17, 1996, the Contractor submitted a clarification letter which better defined the problem with the discrepancy. Shortly thereafter, Port staff met with the Contractor and directed the Contractor to proceed with the work. Both parties agreed that the cost settlement would be resolved at the end of the work to avoid additional delays in the completion of the project. In doing so, the Port and Contractor followed procedures generally as prescribed in the contract documents.

The Contractor substantially completed work in March 1998. In April 1998, the Contractor submitted its cost documentation and requested a final contract modification for $931,676.05. Port staff met several times over the next several weeks with the contractor and negotiated that cost down to $654,917.

The major component in Contract Modification No. 3 is the increased cost triggered by the differing field conditions of the battered piles. Staff's evaluation that these were unforeseeable differing site conditions and therefore not the full responsibility of the Contractor rests upon the following factors:

- The Port's as-built drawings (drawings intended to show the way the piers were actually constructed) incorrectly showed the piles to be of uniform batter and polar orientation. The Contract 2611 plans reflected the uniform batter/orientation which had been shown on these as-built plans. All contractors used the Contract 2611 plans to bid the contract.

- A reasonable Contractor could not detect the pile batter/orientation difference by looking at piles from a boat under the piers.

- Based on the Port's plans, the Contractor bid the contract on the premise that all pile connection frames could be prefabricated off site, would be the same shape and size, and would be delivered for installation at the job site. The connection frames are the steel devices designed to connect the pier cross beams to the batter piles.

- During the project, when the Contractor installed the scaffolding under the piers to take accurate measurements for retrofitting, it discovered that each pile had a somewhat different batter angle and polar orientation. This meant that each connection frame would have to be field measured, custom designed and custom fabricated, substantially increasing the cost of the project. No two frames would be the same.

In summary, Modification No. 3 includes the following:

a. Custom fabricating the structural steel connection frames to accommodate the existing pile geometry. As-built plans for the deck indicated that the piles had been installed uniformly with consistent batter angle and orientation. However, the exact geometry of the existing piles was unknown until the commencement of work. Each pile was located at a different batter and polar angle than every other pile, which required custom measurement, design and fabrication of each of the 250 pile repair connection frames. The contractor demonstrated that it did not include the custom measurement, design and fabricating in its bid.

Cost: $534,878

The two additional cost issues incorporated into Modification No. 3 are as follows:

b. Coring through the concrete deck reinforcing steel: The construction drawings instructed the contractor to avoid cutting the reinforcing steel in the concrete deck. However, due to the random pattern of the rebar in the deck, it was virtually impossible for the contractor to determine the location of the steel. As a result, the contractor was required to cut thousands of steel bars to install the pile repair frames, which was not included in the original scope of work. The contractor demonstrated that it did not include the cost of this additional cutting in its bid.

Cost: $90,122

c. To prolong the maintenance-free life of the pile frames, nuts, and bolts, the Port recommended a contract change to coat these items with a bitumastic coating.

Cost: $29,917

Total Modification No. 3 **$654,917**

FEMA and OES prepared Damage Survey Reports ("DSRs") for all of the original contract work. Port staff has requested that FEMA prepare supplemental DSRs for the three contract modifications. However, the current FEMA policy for projects at this stage of completion is for the project "close out" process to occur, after which one supplemental DSR will be written to address the additional project costs. Port staff expects FEMA's agreement to fund these additional costs, but the extent of additional funding will not be known for several months. Funds from the supplemental appropriation for earthquake repairs will be needed for any work not covered by DSRs.

Port staff requests authorization to execute contract Modification No. 3, resulting from differing site conditions. Port Staff is seeking funding for this modification from OES and FEMA as part of FEMA's project close out process.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

PORT OF SAN FRANCISCO
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-116

WHEREAS, Contract 2611 was awarded for $4,659,000 with a $470,000 contingency to perform seismic repairs and mitigation work on the earthquake damaged Ferry Plaza and Piers 27 & 29; and

WHEREAS, due to differing site conditions, it was necessary to modify the contract; and

WHEREAS, Contract Modification No. 1 for $13,501 and Contract Modification No. 2 for $428,939 were executed within the contract contingency of $470,000 previously authorized by the Commission; and

WHEREAS, Port staff negotiated Contract Modification No. 3 for $654,917 which requires Commission approval; and

WHEREAS, Contract Modification No. 3 covers the additional cost of deck coring, custom frame fabricating and bitumastic coating; and

WHEREAS, the original contract amount was fully funded by FEMA and OES and Port staff has requested supplemental Damage Survey Reports (DSRs) to cover the additional costs of the contract modifications; and

WHEREAS, the current process with FEMA is that it does not prepare supplemental DSRs until the respective project undergoes a close out process; and

WHEREAS, this process will take several months so the Port will not know if all of the contract modifications will be fully funded, now therefore be it

RESOLVED, that the Port Commission approves Contract Modification No. 3 of Contract 2611, "Ferry Plaza and Piers 27 & 29, Earthquake Repair Project, Pile and Deck Repair," for $654,917 with San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipe Lines, a Joint Venture for a total contract amount of $5,756,357.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

PORT OF SAN FRANCISCO

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MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Permission to Advertise for Competitive Bids for the Downtown Ferry Terminal Project

DIRECTOR'S RECOMMENDATION: TO APPROVE THE REQUEST FOR PERMISSION TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF THE DOWNTOWN FERRY TERMINAL PROJECT

On July 16, 1998 the Port Commission authorized Port staff to award a consultant contract for construction management services for the Downtown Ferry Terminal Project to San Francisco Port Management Consultants (SFPMC). SFPMC has completed its constructability review of the draft contract documents, including the design plans and specifications. The design team (Port staff and consultant) is currently reviewing the proposed revisions for incorporation into the final design plans and specifications. The contract documents are scheduled for 100% completion in January 1999. Staff now recommends Port Commission approval for advertisement of the construction bid for this project. The main project elements will include the following:

Base Bid Elements

- New South Ferry Terminal
- New Central Concourse / Breakthrough
- New Boiler Room
- Refinished South Arcade and East Promenade

THIS PRINT COVERS CALENDAR ITEM NO. **6B**

Additive Bid Elements

- New North Ferry Terminal
- New Breakwater
- New Canopies for weather protection

The requisite project permits have been obtained.

The construction cost is estimated to be $13-14 million for the Base Bid and most of the Additive Bid Items including the new North Terminal and one of the Breakwater Additive Bid Items. The Port currently has sufficient resources in State and Federal monies available to fund this project.

An overall project duration of fifteen months is anticipated to complete the current scope of work.

Port staff seeks Commission authorization to advertise for construction bids for this project following completion of the contract documents, which is expected to occur in January 1999.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

PORT OF SAN FRANCISCO
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-117

WHEREAS, the Port's construction management consultant, San Francisco Port Management Consultants, has completed the constructability review of the contract documents for the construction of the Downtown Ferry Terminal Project; and

WHEREAS, the contract documents are scheduled for 100% completion in January 1999; and

WHEREAS, the Port has secured approximately $13.7 million in State and Federal funding for the project construction; and

WHEREAS, the Port's construction management consultant has determined that the current funding is sufficient to cover the Base Bid elements and most of the Additive Bid Items; and

WHEREAS, the Port's construction management consultant recommends a project duration of fifteen months; and therefore, be it

RESOLVED, that the San Francisco Port Commission hereby authorizes Port staff to Advertise for Competitive Bids for the construction of the Downtown Ferry Terminal Project after the contract documents are complete.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

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MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Permission to Advertise for Competitive Bids for the Hyde Street Harbor Improvements Project

DIRECTOR'S RECOMMENDATION: TO APPROVE THE REQUEST FOR PERMISSION TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF THE HYDE STREET HARBOR IMPROVEMENTS PROJECT

Port Staff and an Architectural/Engineering Consultant Team have been working to complete the design of the Hyde Street Harbor Project and related public access improvements. With the design plans now complete, this project is ready for construction bidding. The main project elements include:

- a new marina consisting of a 60 berth fishing facility at Hyde Street Harbor, including an accessible gangway, floating walkways, berths, utilities, and associated dredging;
- new utilities along fish alley, including a new asphalt paved surface;
- partial demolition of the 490 Jefferson building to accommodate a new 24 car parking lot;
- a new parking lot at the north end of Hyde Alley to accommodate 21 parking stalls;
- a new bathroom and storage facility building near the new marina; and
- public and disability access from Jefferson Street to the public access area at the north end of Hyde Alley.

THIS PRINT COVERS CALENDAR ITEM NO. 6C

The Bay Conservation and Development Commission has approved the permit for this project. We anticipate receiving an Army Corps of Engineers permit by the end of December. In addition, the Mayor's Citywide Coordinator for Disability Access, the Fisherman's Wharf Advisory Committee, and the Environmental Quality Advisory Committee have approved the design for this project. The Port Commission previously accepted responsibility to manage a loan from the Department of Boating and Waterways in the amount of $3,500,000 for the design and construction of the Hyde Street Harbor improvements. In addition, the Port Commission has approved $1.05 million in Capital Funds to design and construct the improvements at the Hyde Street Harbor site. The construction contract work will include contractor mobilization and demobilization, demolition, supervision and management, materials, and equipment to complete the work as generally described above and set forth in the construction documents. The current engineer's cost estimate for the construction is $3,500,000.

Prepared by: Cliff Jarrard, Chief Harbor Engineer

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **98-118**

WHEREAS, on December 20, 1996, Resolution No. 96-136, the Port Commission authorized staff to accept a $3.5 million loan from the State Department of Boating and Waterways for the design and construction of the Hyde Street Harbor Project; and

WHEREAS, on April 14, 1998, Resolution No. 98-30, the Port Commission approved the expenditure of an additional $1.05 million in capital funds for the design and construction of the Hyde Street Harbor improvements; and

WHEREAS, the Port staff and its design consultants have sufficiently completed the design plans and specifications such that the construction work may be competitively bid; and

WHEREAS, the Port engineer's current cost estimate for construction, including a reasonable contingency is $3,500,000; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes Port Staff to Advertise for Competitive Bids for the construction of the Hyde Street Harbor Improvements Project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

PORT OF SAN FRANCISCO

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MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Pius Lee
Hon. Brian McWilliams

FROM: Douglas F. Wong
Executive Director

SUBJECT: Consideration of Protest Filed by Rogers, Joseph, O'Donnell & Quinn on Behalf of the Mentmore Development Company/The Mills Corporation Development Team Regarding the Exclusive Negotiation Rights Award for the Ferry Building Project

DIRECTOR'S RECOMMENDATION: REJECT THE PROTEST AND DO NOT (1) RESCIND THE NOVEMBER 17, 1998 DECISION TO AWARD WILLIAM WILSON AND ASSOCIATES THE OPPORTUNITY TO ENTER INTO AN EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH THE PORT TO REHABILITATE AND LEASE THE FERRY BUILDING, (2) SCHEDULE A NEW VOTE, OR (3) REQUIRE THAT THE PRESIDENT OF THE COMMISSION RECUSE HERSELF FROM ANY VOTE UPON, OR DISCUSSION WITH OTHER COMMISSIONERS ABOUT, THE COMPETING PROPOSALS SUBMITTED FOR THIS PROJECT.

This staff report provides to the Commission for its consideration a staff Memorandum dated December 10, 1998 responding to the November 30, 1998 Protest filed by Rogers, Joseph, O'Donnell & Quinn on behalf of the Mentmore Development Company/The Mills Corporation Development Team Regarding the Exclusive Negotiation Rights Award for the Ferry Building Project, a statement.

The Mills Corporation issued the attached December 4, 1998 statement that even though they submitted a joint bid with Mentmore Development Company on the Ferry Building Project, they are not a party to the Mentmore complaint and do not intend to file any protest.

A draft resolution is attached for the Commission's consideration which would reject the protest for the reasons outlined in the staff memorandum attached to this document.

THIS PRINT COVERS CALENDAR ITEM NO. 7A

MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Pius Lee
Hon. Brian McWilliams

Douglas F. Wong
Executive Director

FROM: Paul Osmundson PO
Director, Planning & Development

Noreen Ambrose NA
Port General Counsel

SUBJECT: Response to Mentmore/Mills Protest of Port Commission's November 17, 1998 Decision

On November 30, 1998, Mentmore/Mills Development Team ("Mentmore/Mills")[1] submitted a written protest letter objecting to the Port Commission's November 17, 1998 decision to enter into exclusive negotiations with William Wilson and Associates ("Wilson") for the rehabilitation and lease of the Ferry Building.

Mentmore/Mills identified four grounds in support of its request "that the Port Commission rescind its decision and schedule a new vote" . . . and "that the President of the Port Commission recuse herself from any vote upon, or discussion with other Commissioners about, the competing proposals submitted for this project." (Protest letter at p. 4.) The four issues raised in the Mentmore/Mills protest letter are quoted below, and each issue responded to in turn.

ISSUES RAISED

1. The President of the Port Commission had a publicly undisclosed conflict of interest that irreparably invalidated the Port Commission's vote on the competing proposals submitted to the Port.

---

[1] Mills Corporation has indicated in a press release dated December 4, 1998, that it is not associated with the protest of the Ferry Building Development team selection. The Port is awaiting formal notification.

2. Wilson did not comply with a fundamental RFQ/P and Supplemental Request requirement to provide the Port with lease income that is not subordinated to debt or equity payments associated with the rehabilitation project.

3. An award to Wilson would violate both: (a) City Charter requirements that the Port award the lease to the offeror providing the highest economic return to the City; and (b) Administrative Code requirements that the Board of Supervisors may only approve lease arrangements that provide the highest economic return to the City.

4. The Port staff's evaluation was fatally flawed and prejudicial to Mentmore/Mills due to an improper scoring methodology that failed to recognize the primacy of economic return to the Port.

SUMMARY RESPONSE

1. The City Attorney determined that the President of the Port Commission, Ms. Denise McCarthy, did not have a conflict of interest in voting on the Ferry Building development team selection, and she was so advised prior to the vote on November 17, 1998.

2. Mentmore/Mills misconstrued Wilson's proposal. Wilson did not propose that Port lease income be subordinated to debt or equity obligations.

3. The Port Commission's decision to negotiate exclusively with Wilson for a lease agreement for the rehabilitation of the Ferry Building is consistent with City Charter and Burton Act requirements. The decision to select Wilson satisfies Administrative Code provisions establishing Board of Supervisors policy in that the award of the exclusive right to negotiate was to the highest ranked responsible bidder in accordance with the competitive bidding procedure established by the Ferry Building RFQ/RFP.

4. The Port staff evaluation assessed the four proposals on the selection criteria identified in both the RFQ/RFP and in the letter invitation to submit a proposal. Mentmore/Mills assertion that a development team's proposed economic return should be given greater weight than the other selection criteria is not supported by the procedures established in either the RFQ/RFP or invitation; is not required by law; and, is not consistent with the Port's stated goals and objectives for the Ferry Building project.

ANALYSIS

1. Commissioner McCarthy Did Not Have a Conflict of Interest in Voting on the Ferry Building Development Team Selection

The Mentmore/Mills bid protest contends that Commissioner McCarthy had a conflict of interest in the Port Commission's decision on the bids to rehabilitate the Ferry Building, and that her participation in that decision violated the Political Reform Act, Government Code § 1090, San Francisco Charter § 8.105, and Chapter 58 of the San Francisco Administrative Code. The basis for the alleged conflict is that Commissioner McCarthy holds a salaried position with the Telegraph Hill Neighborhood Center ("THNC"). Marcia Smolens, the lobbyist for the successful bidder, is a member of the Board of Director of THNC. Ms. Smolens has no direct interest in the Port's decision to award the project, other than as a consultant to one of the bidders.

a. Political Reform Act, Charter § C8.105(c), Chapter 58 of the San Francisco Administrative Code.

The relationship between Commissioner McCarthy and Ms. Smolens does not present a conflict under state or local law. Under the Political Reform Act, a public official may not make, participate in making, or seek to influence a governmental decision that will have a material financial effect, different from the effect on the public generally, on the official's economic interests, as defined in the Act. (Gov't Code §§ 87100, 87103.) An official's economic interests include any source of income to the official of $250 or more during the 12 months prior to the decision. The source of income to a public official who is an employee of the nonprofit organization is the nonprofit corporation, not a member of the Board of Directors of the nonprofit corporation. *See Kolokotronis*, FPPC No. A-96-115 (Apr. 1996). If the decision before the Port had a material financial effect on Commissioner McCarthy's source of income, i.e, THNC, Commissioner McCarthy would have been disqualified. Any material financial effect of the decision on Ms. Smolens acting as an individual representing a client unrelated to THNC is not considered a conflict of interest under the Political Reform Act.

As Mentmore/Mills notes, San Francisco Charter § C8105(C) and Chapter 58 of the San Francisco Administrative Code essentially mirror the provisions of the Political Reform Act. Thus, for the same reasons that the protest fails to allege a violation of the Political Reform Act, it fails to allege a violation of these provisions of local law.

b. Gov't Code Sec. § 1090, San Francisco Charter § 8.105(a).

Under Government Code § 1090, neither a public official, nor the board or commission of which she is a member, may make a contract in which the official has a financial interest. Commissioner McCarthy has no financial interest in the Port's decision to enter negotiations with Wilson, the contracting party. In fact, she has no financial relationship with

the contracting party at all. She is not an employee, stockholder, broker, agent, creditor, officer, or supplier of goods or services to any contracting party. *See* Gov't Code §§ 1090, 1091, 1091.5.

Mentmore/Mills demonstrates a misunderstanding of Govt. Code § 1090 by contending that a "remote" exception for employees of a nonprofit organization would have allowed Commissioner McCarthy to abstain from voting had she disclosed her interest. The remote interest exception for employees of nonprofit organizations provides that employees of nonprofit organizations have only a remote interest in the contracts, purchases and sales of the nonprofit organization that employs them (in contrast to an employee of a business entity who is deemed to have an interest in the contracts of the employer). *See* Attorney General, Conflicts of Interest, at 58 (1998). Here, THNC is not the contracting party and has no interest whatsoever in the Port's decision regarding the Ferry Building. Mentmore/Mills has identified no financial benefit that inures to Commissioner McCarthy as a result of the decision to negotiate with Wilson. In the absence of any financial interest in the contract, there is no violation of § 1090. San Francisco Charter § 8.105(a), which essentially mirrors Gov't Code § 1090 is not violated for the same reason.

2. Mentmore/Mills Incorrectly Concluded That Wilson's Proposal Is Non-Responsive to a Fundamental Requirement of the RFQ/RFP and Supplemental Request.

In its November 30th protest letter, Mentmore/Mills asserted that Wilson's proposal was non-responsive because "Wilson's proposed participation rent payments to the Port are subordinated to both debt and equity returns." (Protest letter at p. 11.) Mentmore/Mills' allegation is wrong. In fact, under Wilson's proposal, the obligation to pay to the Port both base rent and participating rent is not subordinate to developer debt or equity obligations. Mentmore/Mills apparently misconstrued the statement from the Director's Recommendation to the Port Commission describing Wilson's proposed formula for calculating participation rent. Although the amount of participating rent was based on a formula that included deductions from net operating income for debt service and return on equity, the obligation to make the payment to the Port as so calculated was senior to any developer debt or equity obligations.

The RFP includes as one of the Port's criteria for the Ferry Building rehabilitation "participation in future increased revenues." Each of the proposals, including the William Wilson and Associates proposal, included a mechanism for the Port to participate in future increased revenues.

William Wilson and Associates, Trizec Hahn and Madison/Myers all proposed that the method of calculation for determining the Port's "participation in future increased revenues" would take into consideration debt payments and returns on equity. However, all payments of rent owed to the Port, including both guaranteed base rent and percentage or participation rent, under these three proposals would be unsubordinated (or made prior) to any debt payments or returns on equity (in terms of seniority of payment under the lease and/or financing agreements).

The method of calculating "participation in future increased revenues" is a separate and completely distinct factor from whether or not any of the Port's income is subordinated to any developer debt or equity. One is a method of calculation of the Port's participation in the increases in the financial benefits generated by the development, and the other is a legal description of the order of seniority (or priority) of payments form the property between lease payments, debt service, and equity return. In the proposal from William Wilson, payments to the Port under the lease will have priority over debt service which will be subordinate to the lease obligations. Therefore, William Wilson did comply with the stated requirement in the RFP.

Further, even if Wilson's proposal was non-responsive in any aspect, prior to pursuing legal action to review the Port Commission's decision, Mentmore/Mills should consider the General Terms and Conditions that govern participation in this process. (RFQ/RFP at pp. 11-12.) Section 3 provides that:

> The Port reserves the right to modify or suspend any and all aspects of the process indicated in this solicitation, to waive any defects as to form or content of this request or any responses received, and to request that respondents clarify, supplement or modify the information submitted.

This provision benefited Mentmore/Mills by allowing the Port to consider non-responsive aspects of the Mentmore/Mills proposal relating to development outside the Ferry Building footprint. The Ferry Building RFQ/RFP, in the Ferry Building Development and Design Guidelines (Appendix, p. 9) states: "In its investigations the Port has determined that it is unlikely that the Ferry Building can be expanded beyond its existing footprint. In the proposal phase, developers should take this finding into consideration and, if wishing to propose a development concept that expands the building footprint, present that as an option along with a concept not requiring an expansion." Further, the June 3, 1998 Pre-Submittal Meeting and Building Tour included the following question and answer from Port staff:

> Question 11: Is it possible to expand the building over the Ferry Plaza?
>
> Answer: The RFQ/P encourages respondents to consider utilizing the existing footprint of the Ferry Building in responses to the RFQ/P. It states that if one wishes to expand beyond the footprint of the building, they may do so but must also include a proposal that stays within the footprint of the building to provide a basis for comparison with other proposals. The Bay Conservation and Development Commission (BCDC) and the Port consider the Ferry Plaza as a public access area, but also encourage (in BCDC, Port and City plans) open air café dining, retail and other uses that spill out onto Ferry Plaza and help activate the plaza.

Mentmore's proposal incorporated development space that extended beyond the Ferry Building footprint. Mentmore never provided a proposal that stayed within the footprint of the building. Thus, Mentmore/Mills benefited from the Port's ability to waive defects as to the form or content of responses received.

3. The Port Commission's Selection of Wilson Is Consistent With the Burton Act, the Charter, and the Administrative Code.

Mentmore/Mills asserts that the Commission's decision to negotiate exclusively with Wilson is invalid because the Port Director failed to apprise the Commission of:

> (1) a Charter "requirement that the Port lease property for non-trust purposes to the party which will yield the 'maximum profit' to the Port" (citing Charter section B-3.851(f)); and/or
>
> (2) an Administrative Code provision governing Board approval of proposed leases that provides "it shall be the policy of said Board (1) to approve only such proposals as have been awarded to the highest responsible bidder in accordance with competitive bidding procedures . . .". (Admin. Code section 2.6-1(1).)

In citing these provisions Mentmore/Mills implies that because it was ranked higher than the other development teams in terms of the economic proposal, the Charter and Administrative Code require that Mentmore/Mills be selected. As discussed below, these provisions do not require the Port Commission to select the developer based on the economic proposal to the exclusion of all other selection criteria. Further even if Mentmore/Mills interpretation were correct, the Port's analysis ranked Mentmore/Mills last, and thus, Mentmore/Mills was not the highest responsible bidder and its selection would not yield the maximum profits overall, taking into account project feasibility and the other selection criteria. The essence of Mentmore/Mills complaint appears to be, as stated later in its fourth basis for the protest, "that economic return, at a minimum, should have been given primacy over all other evaluation criteria." (Protest letter at p. 24.) Mentmore/Mills cannot substitute its judgment for that of the Port Commission, and the Commission's determination is consistent with the laws cited by Mentmore/Mills.

a. Charter § B-3.851(4).

Mentmore/Mills asserts that the cited Charter provision (enacted as a condition of the property transfer) requires that a lease award must be made to the offeror that would provide the maximum return to the Port if the Project is for non-trust purposes. Mentmore/Mills conclusion that the Ferry Building is not required "for purposes consistent with the trusts upon which the lands are held by the state and with the requirements of commerce and navigation" shows a fundamental misunderstanding of the project. The Port Commission has consistently

and clearly established its intent to achieve public trust objectives in this effort to rehabilitate the Ferry Building.

All of the Port's extensive efforts in this area, including the recently funded multi-million dollar Downtown Ferry Terminal project, the Mid-Embarcadero Plaza project, the expenditure of over one million dollars on the Ferry Building pre-development analysis, and the ongoing negotiations to achieve the historic preservation of Pier 1 have been undertaken with a view toward reestablishing the Ferry Building as the centerpiece of public trust activity on the Waterfront. The RFQ/RFP statement of the Port's Development Goals, Objectives and Program identify numerous objectives in furtherance of the public trust. The overarching objective, of course, is that of historic preservation and renovation of the City's premier maritime architectural landmark. Other important trust objectives include achieving "a high level of public use and support," "create public-oriented uses on the ground floor which will be a vibrant mix of commercial, retail and public uses appropriate for a celebrated meeting place, public facility and transportation center on the water[;] be local and distinctive and cater to residents, workers, and commuters, thereby enhancing visitor experiences as well[;] accommodate transit passengers waiting for ferries, with protection from inclement weather." (RFQ/RFP at p. 10.) Although the Port does anticipate that general office use will be permitted as necessary to provide financial support, that use is incidental to the achievement of the primary trust objectives for the project.[2]

As discussed further below, Mentmore/Mills reliance on its "maximum profits" argument also fails because, even if it were the governing standard, all of the selection criteria would bear on the determination as to which development team could feasibly achieve a desirable and successful project that would actually achieve the proposed profits.

b. Administrative Code § 2.6-1.

Mentmore/Mills also asserts that the Board of Supervisors may only approve the lease if the proposal has been awarded to the highest responsible bidder, and that the Board would have to violate this policy to award the lease to any developer other than Mentmore/Mills. The record shows, however, that in selecting Wilson, the Port Commission did select the highest ranked bidder in accordance with the competitive bidding procedures established in the RFQ/RFP.

c. Mentmore/Mills Proposal.

Mentmore/Mills protest letter asserts that its proposal is responsive to all RFQ/RFP and Supplemental request requirements and provides the best economic return to the Port. Since that discussion was intended to support its erroneous judgment that proposed

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[2] Moreover, Mentmore/Mills later acknowledges that Wilson's proposal identified the highest rent per square foot for the office uses. (Protest letter at p. 17.) Thus, even if the "maximum profits" standard were applicable to a non-trust, general office component of the project, Wilson's selection would appropriate under that standard.

economic return should have been given primacy over all other evaluation criteria, the following is just a sample of clarifications and corrections.

First, Mentmore/Mills incorrectly asserts that its proposal met all of the Port's requirements. (Protest letter at p. 17.) See discussion, infra, at p. 4, regarding the lack of a conforming proposal showing a development program confined to the Ferry Building footprint.

Second, Mentmore/Mills incorrectly asserts that the Port failed to take into account the fact that Mentmore/Mills proposed only a 50-year lease. The Director's Recommendation did identify that Mentmore/Mills proposed only a 50-year lease. (Director's Recommendation at p. 11.)

Third, the Mentmore/Mills proposal ranked last in Project Feasibility not only because the proposed rental structure is significantly higher than what can typically be supported by similar developments, and its construction cost estimates were 20-25% below the Port's estimates, but also because of the high debt/equity ratio (80/20%), compared to a 60/40% or lower debt/equity ratio for Wilson.

Mentmore/Mills' response to the Port's assessment that the team's construction cost estimates were too low focuses on the direct costs, whereas it was in the "soft" or indirect costs that the Port identified the discrepancy. Mentmore/Mills and Wilson both estimated approximately $44 million for direct costs. It should be noted, however, that Mentmore proposed an additional 11,000 square foot Market Circle extending beyond the building and a mezzanine addition. On a per square foot basis, Mentmore/Mills cost estimate of $201 per square foot was substantially lower than the other three proposals. For indirect, financing and tenant relocation costs, Mentmore/Mills' estimate was about $8 million lower than Madison Marquette, $11 million lower than Wilson, and over $17 million lower than Trizec Hahn. The significantly lower cost estimate, together with the minimal contingency ($356,000, compared to $2.2 million to $3.3 million for the other teams) was considered a major risk to project feasibility, particularly in combination with the high debt/equity ratio.[3]

The concern related to Mentmore's equity position was that with the ratio of debt (80%) to developer equity (20%) was higher than current lending standards for comparable projects and far higher than the other proposals. The higher reliance on debt poses an extra

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[3] The Port by fax of September 29, 1998 had asked Mentmore to " explain why your contingency cost estimate of 1% is appropriate and how it compares with your previous experience." Their response did not provide any comparisons with comparable experience. Their representative stated that "[t]he project budget represents a complete and conservative estimate of project costs which should obviate the need for major soft cost protection. Further, the soft cost contingency of 1% is in addition to the construction contingency of 5%. We have been analyzing the Ferry Building rehabilitation project for over one year, and are certain we clearly understand the design and construction issues peculiar to this complex adaptive re-use program. Our numbers reflect this confidence."

feasibility risk to the project, and thus an extra economic risk to the Port. If project costs are higher than anticipated, as is common for historic rehabilitation projects, debt has already been maximized and thus additional equity would be required to cover those costs. Further, in complex projects additional at-risk capital is often required in the predevelopment phase before either construction debt or tax credit equity is available. Mentmore proposed only $11.4 million in equity, of which $7.8 million was in the form of historic preservation tax credits and only $3.6 million was from the developers capital resources. This $3.6 million "out-of-pocket" developer contribution is very low for a project of this size. The more equity that is committed to a project up front (before debt financing is available), the more security the Port has that the project will be completed. The upfront costs are incurred before any loan proceeds or tax credit equity are available, which is typically considered to be the riskiest phase of a project. In contrast, the other developers' proposed equity investment, exclusive of tax credits, ranged from $10.5 million to $43.5 million, and thus, those teams ranked higher on project feasibility.

Fifth, regarding Mentmore/Mills assessment of the risks associated with Wilson's proposal, Port staff provides the following clarifications. Wilson's rents, as shown in the attachments to the Director's Recommendation, though still higher than Mentmore's at the top end, are full service rents, which the Port reduced by about $10 to $12 per square foot to convert to net rents to make them comparable. (See Director's Recommendation at p. 11.)

As to the alleged failure by Wilson to address parking, William Wilson directly addressed the parking issue by proposing that up to 35 valet parking spaces be provided in the east portion of the ground floor in the south wing of the Ferry Building, accessed from the Ferry Plaza. This parking resource could also be used for food market and other service/delivery needs of the project. Mentmore/Mills proposal to satisfy parking requirements "through its arrangement with Gabbiano's restaurant," was not mentioned in the Director's Recommendation. This was because Gabbiano's long-term lease does not include any parking spaces. Gabbiano's has a provision for valet pick-up and drop-off on the Ferry Plaza at Gabbiano's, and its Port leases for parking (between the Ferry Building and the Agriculture Building) are on a month-to-month basis. Gabbiano's use of portions of the Ferry Plaza for *ad hoc* parking is not included within the Port's lease, and has recently been cited in a November 13, 1998 letter from the San Francisco Bay Conservation and Development Commission as an apparent violation of BCDC Permit No. 10-73 and Cease and Desist Order No. CCD 9-82.

Finally, with respect to the risk attributed to Wilson's lack of agreement with the World Trade Club, Mentmore has asserted that it has reached general agreement with the World Trade Club, which has a lease through 2004, for a discounted lease but did not provide any written documentation to that effect. While a World Trade Club representative testified in a manner that was supportive of Mentmore before the Port Commission on November 17,1998, representatives of a second long-term tenant, Limbach and Limbach, with a lease through 2006, testified in a manner supportive of William Wilson.

4. Port Staff's Scoring Methodology Was Appropriate, and Was Considered Together by the Commission With the Analysis of the Selection Criteria, and Supporting Documents.

Mentmore/Mills argue that the ordinal scoring system used to summarize the analysis and supporting documents to rank the competing development teams was flawed "because it completely failed to recognize that economic return, at a minimum, should have been given primacy over all other evaluation criteria." This argument was refuted above as not being required by law, or consistent with the Port's trust obligations. Mentmore/Mills preference for this approach is, perhaps, understandable. However, Mentmore/Mills approach would not be reflective of the Port Commission's oft stated objectives for the Ferry Building project, nor with the selection criteria identified in the RFQ/RFP that established the rules and procedures for this competitive process. The RFQ/P listed Qualifications, Development Concept, Economic Proposal, Project Feasibility and Understanding/Ability to obtain approvals in a Complex Regulatory Environment, in that order. All these factors are critical to the ability to provide the maximum financial return to the Port. An incomplete or failed project offers no returns no matter what the initial promises. Further, it would have been misleading for the Port to have listed the factors in the order shown, and then pulled out a single factor, economic proposal, for primacy and heavier weighting.

The argument that the ranking was prejudicial to Mentmore/Mills because it did not measure the degree to which one proposal was stronger or weaker ignores the substantial analysis and discussion contained in the Director's Recommendation, the attached appendices, the KMA and KPMG Peat Marwick report, the proposals and other supporting documents, all of which provide the basis for the Port Commission's determination.

Mentmore also asserted that ". . . Port staff concedes that all offerors were well-qualified," with the implication that qualifications should not have had much weight as all respondents must have been close. Where two or more respondents were the same or quite close, Port staff indicated this by a "tie" in the ordinal ranking, e.g. all respondents ranked "1" for Understanding/Ability in Complex Regulatory Environment, and Mentmore and Trizec Hahn ranked "3" for Development Concept. Mentmore ranked "4" on Qualifications based on the evaluation of the July Selection Panel.

CONCLUSION

For the reasons set forth above, we conclude that Mentmore/Mills request that the Port Commission rescind its decision and schedule a new vote, and that Commissioner McCarthy be recused from participation in the decision-making process, is without factual or legal merit.

PAUL OSMUNDSON
NOREEN AMBROSE

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-122

WHEREAS, Charter Section B3.581 grants to the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section B3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on May 15, 1998, the Port issued a Request for Qualifications and Proposals to Rehabilitate and Lease the Ferry Building ("RFQ/P"), to which Madison Marquette Realty Services, Mentmore Development Company/The Mills Corporation, TrizecHahn Development Corporation, and William Wilson and Associates ("Developers") submitted responses; and

WHEREAS, The Port Commission under Resolution No. 98-70 (July 28, 1998) determined that all four Developers met the qualifications requirements and invited the four Developers to submit proposals for rehabilitation and lease of the Ferry Building; and

WHEREAS, Madison Marquette Realty Services/Myers Development Company/Cousins Properties Inc., Mentmore Development Company/The Mills Corporation, TrizecHahn Development Corporation, and William Wilson and Associates ("Respondents") submitted responses to the Port's invitation and request for proposals which complied with the submittal requirements stated in the RFQ/P and the Port's subsequent request; and

WHEREAS, the Port Commission reviewed and evaluated the Respondents, reviewed their responses, including requested additional information, their interviews with Port staff, the analyses of economic, design and planning and land use parameters prepared by Port staff and by Keyser Marston Associates (the Port's independent real estate economics consultant), reviewed the report by KPMG Peat Marwick LLP (another independent consultant of the Port) regarding the evaluation process, and reviewed the Port staff recommendation set forth in the Memorandum to Port Commissioners dated November 12, 1998, for Agenda Item 2A, and determined that William Wilson and Associates best met the qualification requirements for rehabilitation and lease of the Ferry Building; and

WHEREAS, the Port Commission on November 17, 1998 under Resolution No. 98-114 awarded William Wilson and Associates the opportunity to enter into an Exclusive Right to Negotiate agreement with the Port to rehabilitate and lease the Ferry Building, and authorized the Executive Director of the Port, or his designee, to execute an Exclusive Right to Negotiate agreement, with the understanding that the final terms and conditions of the Lease and related documents negotiated between William Wilson and Associates and Port staff during the Exclusive Negotiation Period would be subject to the approval of the Port Commission; and

WHEREAS, Allan Joseph of the firm of Rogers, Joseph, O'Donnell & Quinn by letter of November 30, 1998 with an attached Memorandum of Protest ("Protest"), stating that they in association with Terrence Goggins of Goggin & Goggin represented the Mentmore Development Company/The Mills Corporation Development Team, protested the decision of the Port Commission to enter into exclusive negotiations with William Wilson and Associates for the Ferry Building project, and requested that the Port Commission rescind its decision, schedule a new vote on the matter, and require that the President of the Port Commission recuse herself from any vote upon or discussion with other Commissioners about the competing proposals for the project; and

WHEREAS, The Mills Corporation issued a statement on December 4, 1998 that the Mills Corporation is not part of the formal complaint filed by Mentmore Development, and that they have not objected to the Port Commission's decision-making process on the Ferry Building restoration and do not intend to file any protest about either the process or the award selection; and

WHEREAS, Port staff including the Port General Counsel have reviewed and analyzed the Protest and prepared a Port staff response as set forth in the Memorandum to Port Commissioners dated December 10, 1998, for Agenda Item 7A;

WHEREAS, the Port Commission has reviewed and evaluated the Protest and the Port staff response, and has determined that there is no basis for this Protest of its November 17, 1998 decision to award William Wilson and Associates the opportunity to enter into an Exclusive Right to Negotiate agreement with the Port to rehabilitate and lease the Ferry Building; now, therefore, be it

RESOLVED, that the Port Commission hereby finds that there is no basis for (1) rescinding its November 17, 1998 decision to award William Wilson and Associates the opportunity to enter into an Exclusive Right to Negotiate agreement with the Port to rehabilitate and lease the Ferry Building and (2) scheduling a new vote, nor for requiring that the President of the Commission recuse herself from any vote upon, or discussion with other Commissioners about, the competing proposals submitted for this project; and be it further

RESOLVED, that the Port Commission hereby rejects the Protest.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

The Mills Corporation
Suite 420
999 Baker Way
San Mateo, California 94404
Tel: (650) 577 9400
Fax: (650) 286 9636

December 4, 1998

Contact: William Strawn
415/433-8200
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Statement by The Mills Corporation
on the Mentmore Complaint to the San Francisco Port Commission

Please attribute this statement to Edward Vinson, Group Vice President, Development, The Mills Corporation

"The Mills Corporation is not part of the formal complaint filed Monday, November 30 with the San Francisco Port Commission by Mentmore Development," said Edward Vinson, Group Vice President, Development.

"Even though The Mills Corporation did submit a joint bid with Mentmore Development on the Ferry Building restoration project, we are not a party to the Mentmore complaint. We have not objected to the Port Commission's decision-making process on the Ferry Building restoration, nor do we intend to file any protest about either the process or the award selection," Vinson said.

The Mills Corporation is partnering with the San Francisco Forty-Niners and with the City to build a new regional value and entertainment-oriented shopping experience as an integral part of the Forty-Niners' new stadium at Candlestick Point.

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PORT OF SAN FRANCISCO

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MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorize approval of the San Francisco Bay Trail in the Southern Waterfront.

DIRECTOR'S RECOMMENDATION: THAT THE COMMISSION APPROVES THE RESOLUTION.

The San Francisco Bay Trail is a 400-mile route that extends around the perimeter of the San Francisco Bay. It includes hiking paths, multi-use paths, and on-street bicycle routes in various stages of local designation and development. The Embarcadero Promenade, for example, is an improved segment of the Bay Trail. The Association of Bay Area Governments (ABAG) administers the San Francisco Bay Trail Regional Development Project, which is offering grant funds for construction and maintenance of the Bay Trail.

San Francisco Beautiful, a local non-profit civic organization, orchestrated a partnership of City agencies and private organizations and prepared a ABAG grant application. The partnership application was successful. ABAG awarded a $302,000 grant to implement the Bay Trail in the Southern Waterfront from China Basin to Hunters Point Shipyard. The Department of Public Works (DPW) will receive the grant funds and administer the implementation projects. Portions of the proposed Southern Waterfront Bay Trail run through Port jurisdiction. Attached are maps of the existing and proposed Bay Trail route and Port jurisdiction boundaries.

The partnership application to ABAG referenced recently approved Port improvement projects as credit for the application's required "matching funds." For example, the partnership application cited the Port's approved capital project to improve the Pier 98 Wetlands and Public access (including a Class III Bike Route on Cargo Way) and the Port's capital project to stripe Class II bike lanes along Terry Francois Boulevard in conjunction with the Giants Ballpark.

THIS PRINT COVERS CALENDAR ITEM NO. **7B**

The partnership application to ABAG requested that additional portions of the Bay Trail be implemented in the Southern Waterfront, traversing through both Port and City jurisdiction. Affected areas within the Port jurisdiction include Illinois Street, Arthur Avenue, 24th Street and the north shore of Islais Creek at Seawall Lot 354.

Implementation of the Bay Trail in Port jurisdiction will simply involve installing Bay Trail pole signs and Class III Bike Route pole signs within the right-of-way. Street trees may be planted in the sidewalks in the future. Port staff will ensure that installation specifications meet all applicable codes. The DPW will perform or administer all the work within the City and Port jurisdictions. The Class III Bike Route along Illinois Street will allow bicyclists to share the roadway with vehicles, as they do now, with no striping or restrictions to traffic or parking. Illinois Street is used by vehicles accessing Port facilities. Bay Trail and Class III Bike Route designation will not affect this access.

At this time, the sidewalk and roadway conditions along Illinois Street are unsafe and not adequate for Bay Trail and/or Class III Bike Route designation. Sections of the sidewalk are substandard and there are a number of abandoned railroad spurs within the roadway.

All of Illinois Street is a DPW "accepted street," therefore, DPW is responsible for all maintenance and repair. DPW is currently undertaking two public works projects that will improve Illinois Street. The two projects are: (1) Potrero Hill District Track Removal and Pavement Renovation and (2) Illinois/Ceasar Chavez Streets Sewer Replacement Project. The two projects will remove spur tracks on Illinois Street between El Dorado Street and 25th Street. The main railroad track will remain in the street to serve Pier 80. The roadway will be restored with asphalt concrete. The substandard sidewalks will be rebuilt. Curb ramps will be installed. The two projects will likely be completed by the end of 1999. The Bay Trail and Class III Bike Route signs will not be installed until these roadway improvements have been completed.

The condition of Arthur Avenue and 24th Street appears to be in an adequate condition for Bay Trail and Class III Bike Route designation. The Bay Trail at Islais Creek (SWL 354) consists of the park promenade now under construction atop the sewer outfall and within Port jurisdiction. The park promenade is being constructed by DPW as a condition of their Bay Conservation and Development Commission (BCDC) permit.

The attached resolution approves the designation of the Bay Trail through Port jurisdiction in the Southern Waterfront and allows the DPW to install the requisite Bay Trail and Class III Bike Route pole signs after roadway improvements are completed on Illinois Street. The resolution reserves the right of the Port Commission to reroute the Bay Trail and Class III Bike Routes within Port jurisdiction in the event future Port operations are negatively impacted by the Bay Trail designation. The resolution also requires that the Department of Public Works indemnify the Port of San Francisco against Bay Trail claims arising from the incidents within Port jurisdiction.

Prepared by: Paul Osmundson, Director of Planning & Development

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-119

WHEREAS, Under the City and County of San Francisco Charter, Section B3.581, the Port of San Francisco has the authority and duty to use, conduct, operate, maintain, manage, regulate and control lands within Port jurisdiction; and

WHEREAS, To facilitate the completion of the Bay Trail around the San Francisco Bay, numerous local and regional jurisdictions must cooperatively act to approve implementation of the Bay Trail within their jurisdiction; and

WHEREAS, The Port of San Francisco supports the development of sections of the San Francisco Bay Trail within Port jurisdiction within the Southern Waterfront; and

WHEREAS, San Francisco Beautiful, a local non-profit civic organization, has orchestrated a partnership of City agencies and private organizations and submitted a grant application to the Association of Bay Area Governments to implement construction of the Bay Trail in the Southern Waterfront and the ABAG grant was awarded; and

WHEREAS, San Francisco Department of Public Works will receive the grant funds and administer all the work to complete the Bay Trail improvements identified in the Partnership application; and

WHEREAS, San Francisco Department of Public Works has previously scheduled roadway improvement projects to make Illinois Street safer for bicycle and pedestrian travel by removing abandoned railroad spurs, repaving the roadway, and improving the sidewalks; and

WHEREAS, The proposed Bay Trail work within Port jurisdiction includes designation of the Bay Trail and/or Class III Routes with the installation of such pole signs on: (1) Illinois Street, between 25th Street and approximately 430' north of 23rd Street and between 20th Street and Mariposa Street; (2) 24th Street between Illinois Street and Warm Water Cove; (3) Arthur Avenue between 3rd Street and the Islais Landing Native Plant Park; and (4) Atop the sewer outfall facility at Seawall Lot 354; now, therefore, be it

RESOLVED, That the Port Commission hereby approves the designation of the Bay Trail and Class III Bike Route in Port jurisdiction in the Southern Waterfront as identified in the partnership grant application to the Association of Bay Area Governments after such time that scheduled roadway and sidewalk improvements are completed on Illinois Street by the Department of Public Works; and, be it further

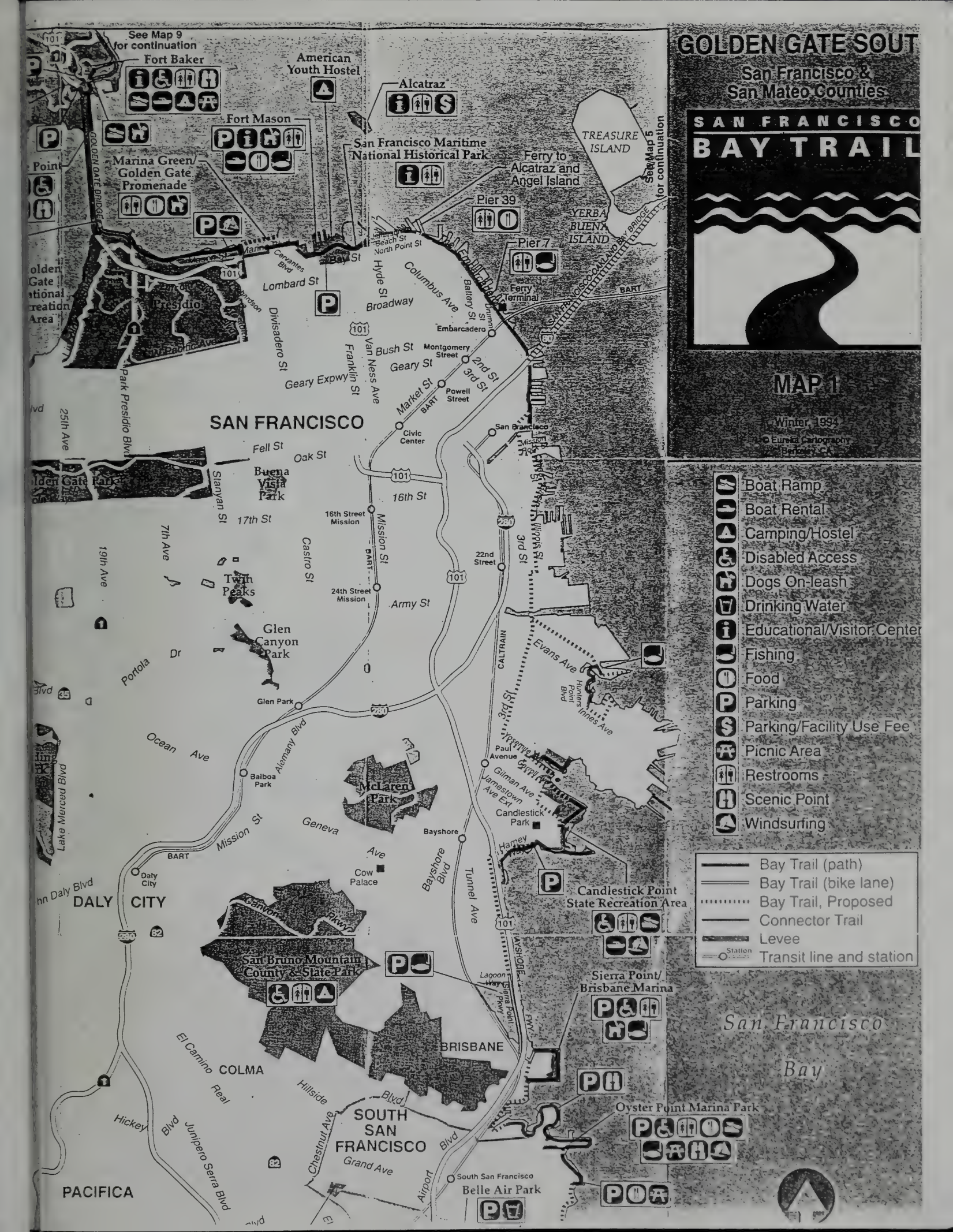
RESOLVED, That the Port Commission reserves the right to reroute the Bay Trail and Class III Bike Route within Port jurisdiction in the event future Port operations are negatively impacted by such Bay Trail designation; and, be it further

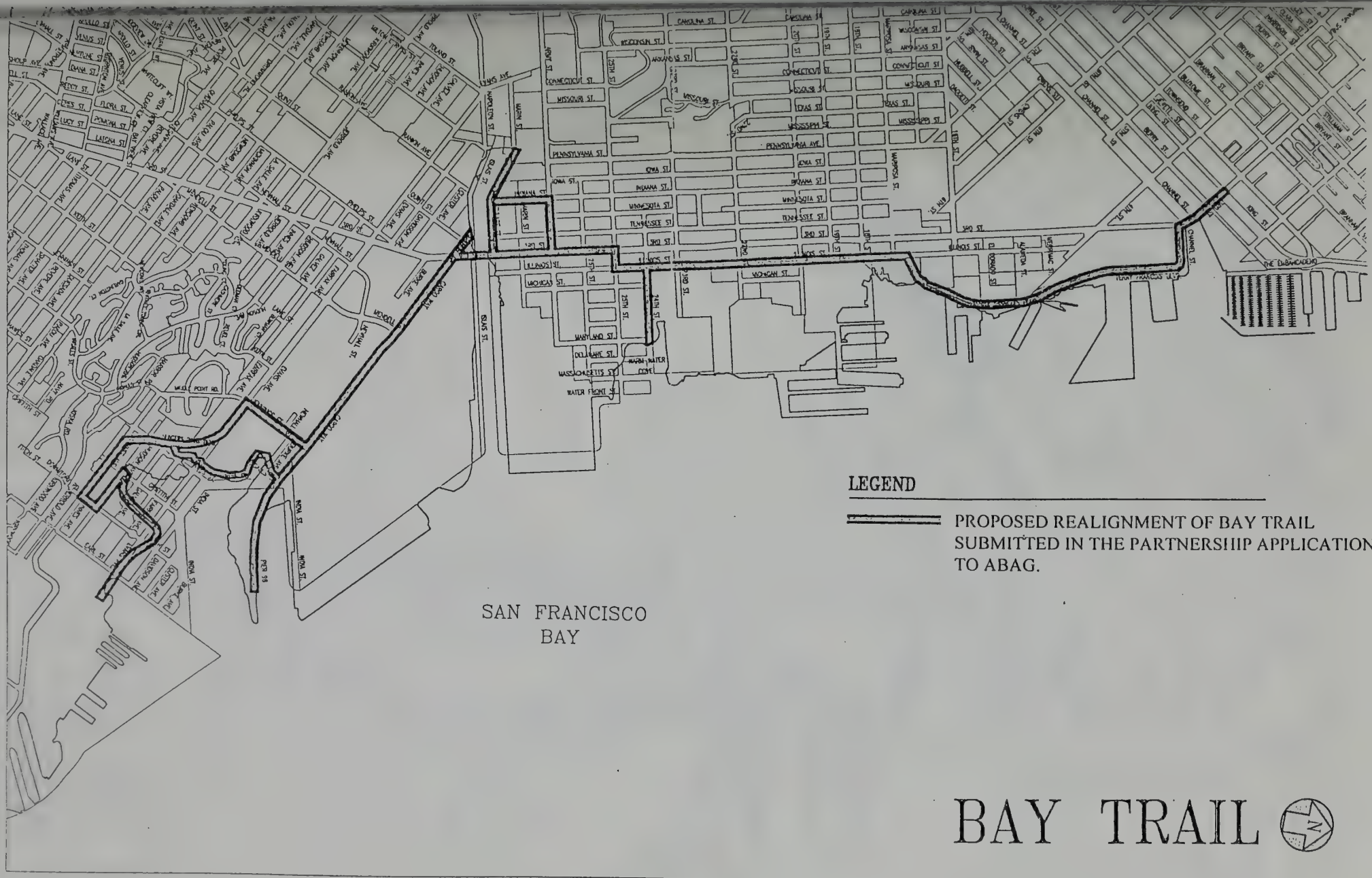
RESOLVED, That the Executive Director or his designee is hereby authorized to enter into a Memorandum of Understanding with the City's Department of Public Works in such form as is approved by the City Attorney, including a provision wherein the Department of Public Works will indemnify the Port against claims arising from Bay Trail incidents within Port jurisdiction, and to take all such further action as may be required to implement the placement of the Bay Trail and Class III Bike Routes in Port jurisdiction in the Southern Waterfront.

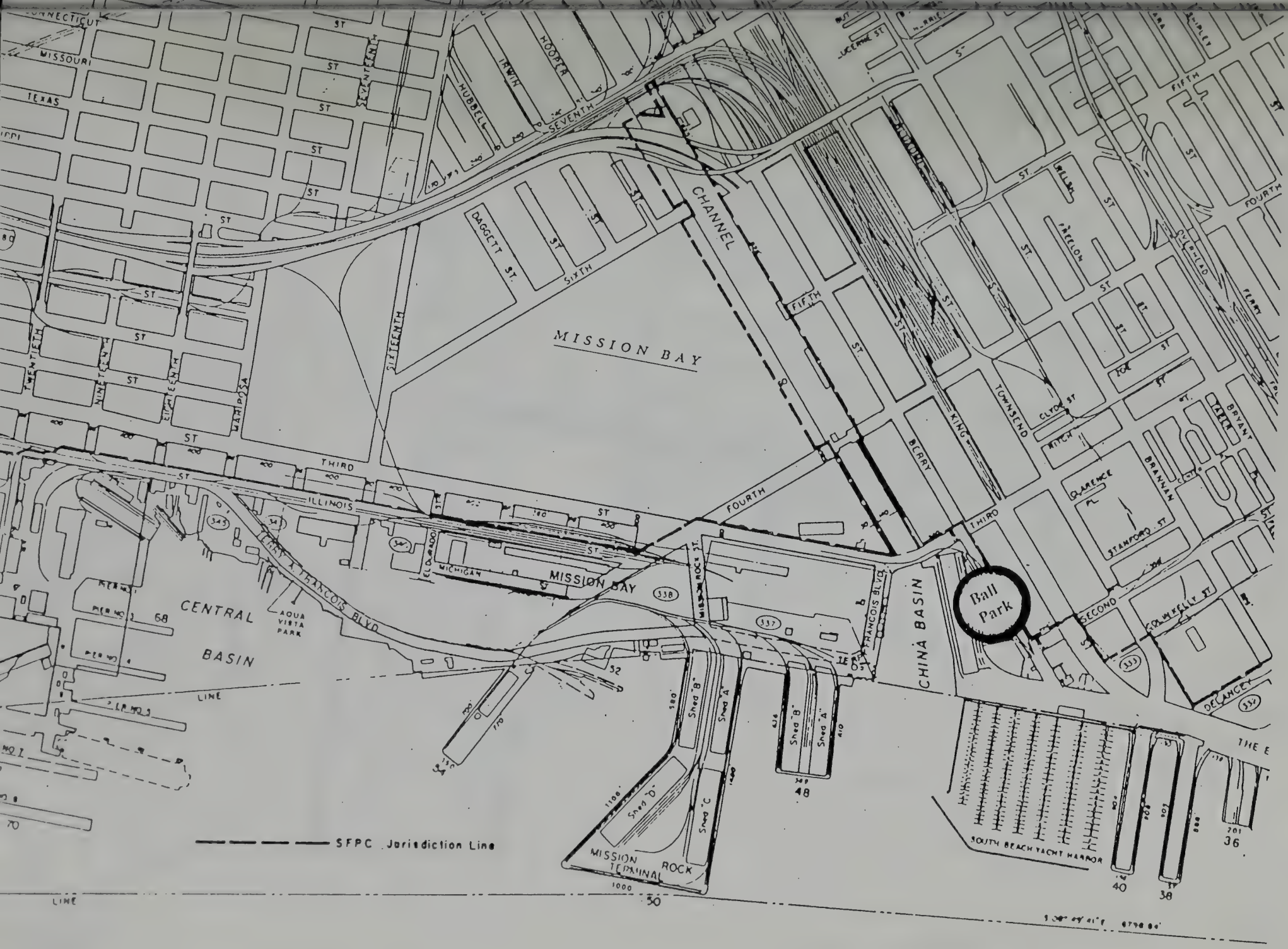
I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____

Secretary


GOLDEN GATE SOUT
San Francisco &
San Mateo Counties
SAN FRANCISCO
BAY TRAIL
MAP 1
Winter 1994
© Eureka Cartography
Berkeley, CA
See Map 9 for continuation
Fort Baker
American Youth Hostel
Alcatraz
Fort Mason
San Francisco Maritime National Historical Park
Ferry to Alcatraz and Angel Island
TREASURE ISLAND
See Map 5 for continuation
Marina Green/ Golden Gate Promenade
Pier 39
YERBA BUENA ISLAND
Pier 7
Ferry Terminal
BART
Presidio
Lombard St
Broadway
Columbus Ave
Embarcadero
Montgomery Street
Powell Street
Market St
Bush St
Geary St
Geary Expwy
Van Ness Ave
Franklin St
Divisadero St
Hyde St
Bay St
SAN FRANCISCO
Civic Center
Fell St
Oak St
Buena Vista Park
Golden Gate Park
Stanyan St
17th St
16th St
16th Street Mission
Mission St
Castro St
7th Ave
19th Ave
Twin Peaks
24th Street Mission
Army St
22nd Street
3rd St
Glen Canyon Park
Portola Dr
Glen Park
CALTRAIN
Evans Ave
Hunters Point Blvd
Innes Ave
Ocean Ave
Balboa Park
Alemany Blvd
Lake Merced Blvd
McLaren Park
Geneva Ave
Mission St
BART
Daly City
DALY CITY
Bayshore
Cow Palace
Bayshore Blvd
Tunnel Ave
Paul Avenue
Gilman Ave
Jamestown Ave Ext
Candlestick Park
Harney Way
Candlestick Point State Recreation Area
San Bruno Mountain County & State Park
Lagoon Way
Sierra Point/ Brisbane Marina
Sierra Point Pkwy
BAYSHORE FWY
BRISBANE
El Camino Real
COLMA
Hillside Blvd
Hickey Blvd
Junipero Serra Blvd
SOUTH SAN FRANCISCO
Chestnut Ave
Grand Ave
Airport Blvd
South San Francisco
Belle Air Park
Oyster Point Marina Park
PACIFICA
San Francisco Bay
Boat Ramp
Boat Rental
Camping/Hostel
Disabled Access
Dogs On-leash
Drinking Water
Educational/Visitor Center
Fishing
Food
Parking
Parking/Facility Use Fee
Picnic Area
Restrooms
Scenic Point
Windsurfing
Bay Trail (path)
Bay Trail (bike lane)
Bay Trail, Proposed
Connector Trail
Levee
Station
Transit line and station


LEGEND
PROPOSED REALIGNMENT OF BAY TRAIL SUBMITTED IN THE PARTNERSHIP APPLICATION TO ABAG.
SAN FRANCISCO BAY
BAY TRAIL


MISSION BAY
CHANNEL
CENTRAL BASIN
CHINA BASIN
Ball Park
MISSION BAY
MISSION ROCK TERMINAL
SOUTH BEACH YACHT HARBOR
SFPC Jurisdiction Line
THIRD
FOURTH
SIXTH
SEVENTH
ILLINOIS
BERRY
KING
TOWNSEND
BRANNAN
DAGGETT ST.
SIXTEENTH
MISSOURI
TEXAS
HUBBELL
HOOPER
DE LANCEY
STANFORD ST
CLARENCE PL
AQUA VISTA PARK
Shed 'A'
Shed 'B'
Shed 'C'
Shed 'D'
68
48
40
38
36
30
32

Western Pacific Site
ISLAIS CREEK CHANNEL
PORT OF SAN FRANCISCO NORTH CONTAINER TERMINAL
CARGO WAY
MISSOURI ST
CONNECTICUT
TEXAS
MISSISSIPPI
PENNSYLVANIA
INDIANA
MINNESOTA
TENNESSEE
THIRD
ILLINOIS
MICHIGAN
TWENTY FIFTH ST.
TWENTY FOURTH ST.
WARM WATER COVE
P. G. & E. CO.
CENTRAL BASIN
U.S. BULKHEAD LINE
SFPC Jurisdiction Line
U.S. PIER HEAD LINE

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Fax 415 274 0528
www.sfport.com

MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice President
Hon. Michael Hardeman
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to Issue a Request for Proposals for a Consultant to Prepare an Economic Impact Report for the Port

DIRECTOR'S RECOMMENDATION: Approve Resolution and Grant Authorization to Issue a Request for Proposals for a Consultant to Prepare an Economic Impact Report for the Port

The Port contributes substantially to the regional economy through both water dependent and non-water dependent industries. Port properties represent a diverse spectrum of uses, ranging from traditional maritime and fishing uses, to tourist related retail uses, office space, industrial and commercial uses, excursion and passenger ferry services.

The purpose of contracting for an economic impact report is to quantify the Port's role as a major catalyst for economic activity in the city of San Francisco and in the Bay region. The report will summarize the Port's economic impact in terms of employment, revenues, and taxes generated by 1) Port industries, 2) Port users, 3) Port tenants, and 4) construction projects. In addition, the report should assess the future economic impact over the next ten years of development currently planned by the Port. The report is intended for use by Port staff, the general public, Port users and tenants, legislators, and regulatory agencies. September 1988 is the last time an economic impact report was prepared for the Port.

THIS PRINT COVERS CALENDAR ITEM NO. 8A

Staff will select a consultant to prepare the report through a competitive proposal process subject to Commission approval. The selection criteria would include the experience of the respondent, the experience of the assigned project staff, the ability to meet the needs of the Port, and cost. The Port's Financial Advisor advises that the estimated cost for a consultant to prepare an economic impact report is approximately $50,000.

A draft of the Request for Proposals in substantial final form is attached.

Prepared by Stephanie Downs, Finance Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-115

WHEREAS, Port staff recommends the preparation of an economic impact report to quantify the Port's role as a major catalyst for economic activity in the city of San Francisco and in the Bay region; and

WHEREAS, Port staff desires to contract for these services with an outside consultant; and

WHEREAS, Port staff requests approval to issue a request for proposals to select a consultant to prepare an economic impact report; and

WHEREAS, The Port's Financial Advisor has advised that the estimated cost to prepare an economic impact report is approximately $50,000; now therefore, be it

RESOLVED, That the Commission hereby authorize staff to issue a request for proposals to select a consultant to prepare an economic impact report.

I hereby certify the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

PORT OF SAN FRANCISCO
CITY AND COUNTY OF SAN FRANCISCO

REQUEST FOR PROPOSALS FOR CONSULTANT TO PREPARE AN ECONOMIC IMPACT REPORT

Deadline for Submission: 11:00 AM – January 28, 1999
Ferry Building, Suite 3100, San Francisco, CA 94111

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APPENDICES

A. HRC ATTACHMENTS - Human Rights Commission Requirements for Consulting Contracts. Included are HRC forms 1, 2A, 3, 4, 5A, 5B and 12B-101.

B. AUDITED FINANCIAL STATEMENTS FOR JUNE 30, 1998 AND JUNE 30, 1997

PORT OF SAN FRANCISCO
REQUEST FOR PROPOSALS FOR CONSULTANT TO PREPARE AN ECONOMIC IMPACT REPORT

I. INTRODUCTION

The San Francisco Port Commission (the "Port") is seeking a consultant to prepare an Economic Impact Report for the Port as more fully described herein (see Section III - "SCOPE OF WORK"). The Port contributes substantially to the regional economy through both water dependent and non-water dependent industries. The purpose of this report is to quantify the Port's role as a major catalyst for economic activity in the region. The report is intended for use by Port staff, the general public, Port users and tenants, legislators, and regulatory agencies.

Any person or firm interested in providing this service should respond to the Port's Request for Proposals ("RFP") for Consultant to Prepare an Economic Impact Report in detail as specified herein. Requests for additional copies of the RFP should be made in writing by faxing your request to the Port of San Francisco, Office of the Finance Manager, Ferry Building, Suite 3100, San Francisco, CA 94111, fax (415) 274-0630. Respondents must make their own arrangements for overnight delivery.

Proposals are due on or before 11:00 a.m. on January 28, 1999. Proposals must be addressed and submitted to the Finance Manager, Suite 3100, Ferry Building, San Francisco, CA 94111 and clearly marked "Proposal for Consultant to Prepare an Economic Impact Report." **Facsimile copies will not be accepted**.

A pre-proposal conference will be held at the Port offices, Suite 3100 in the Ferry Building, at [9:00 a.m. on January 14, 1999 (*to be confirmed with directors*)].

Rating preferences for minority, women, and local business enterprises will be applied as set forth herein (see Section V. - "CITY REQUIREMENTS - Human Rights Commission Requirements"). All interested respondents must complete HRC forms 1, 2A, 3, 4, 5A, 5B and 12B-101 included in APPENDIX A. For additional information, please contact Preston Tom of the Human Rights Commission at (415) 274-0511. MBE/WBE joint ventures are strongly encouraged.

The successful respondent will be required to (i) have a San Francisco Business Tax Certificate, and (ii) enter into a contract that will contain the City and County of San Francisco Standard Contract Provisions (see Section V. - "CITY REQUIREMENTS").

II. GENERAL

A. Port Organization

The Port consists of 7.5 miles of San Francisco Bay waterfront which are held in "public trust" on behalf of all the people of California. Responsibility for the Port was transferred from the State to the City and County of San Francisco (the "City") in 1968. The Port is committed to promoting a balance of maritime-related commerce, fishing, recreational, industrial and commercial activities, as well as protecting the natural resources of the waterfront and developing recreational facilities for public use.

The Port is governed by a five member Port Commission that is responsible for the operation, management, development and regulation of the Port. In fiscal year 1998-99 there are 218 permanent budgeted positions.

All revenues generated by the Port can only be used for Port purposes. The Port receives no operating subsidies from the City, and the Port has no taxing power.

B. Waterfront Land Use Plan

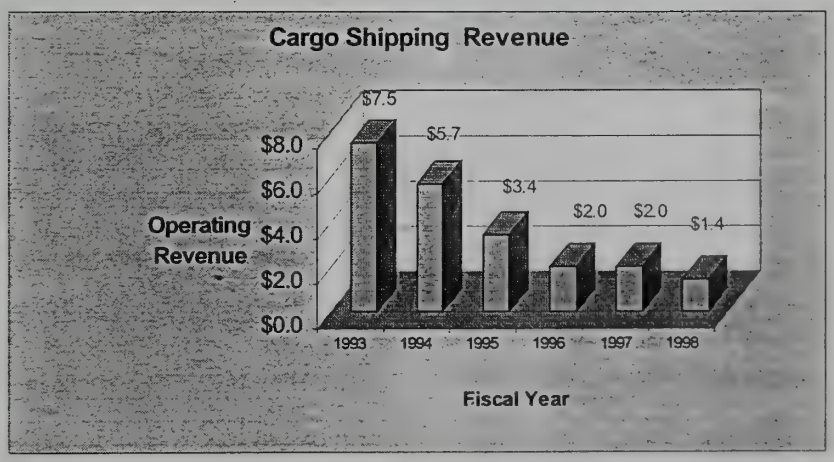
The Waterfront Land Use Plan (Waterfront Plan) was adopted by the Port Commission in June 1997. Since then, the City has approved amendments to the San Francisco General Plan, Planning Code and zoning to allow development of the uses promoted in the Waterfront Plan, and to streamline the project approval process. Port staff is now concentrating its efforts on concluding negotiations with BCDC to develop amendments to BCDC plans that similarly will enable full implementation of the Waterfront Plan.

With the completion of the Waterfront Plan, the moratorium on new non-maritime development, established under Proposition H, has been lifted. The Port is now proceeding with RFPs and new leases for maritime and non-maritime developments, consistent with the Waterfront Plan.

C. Port Maritime Industry

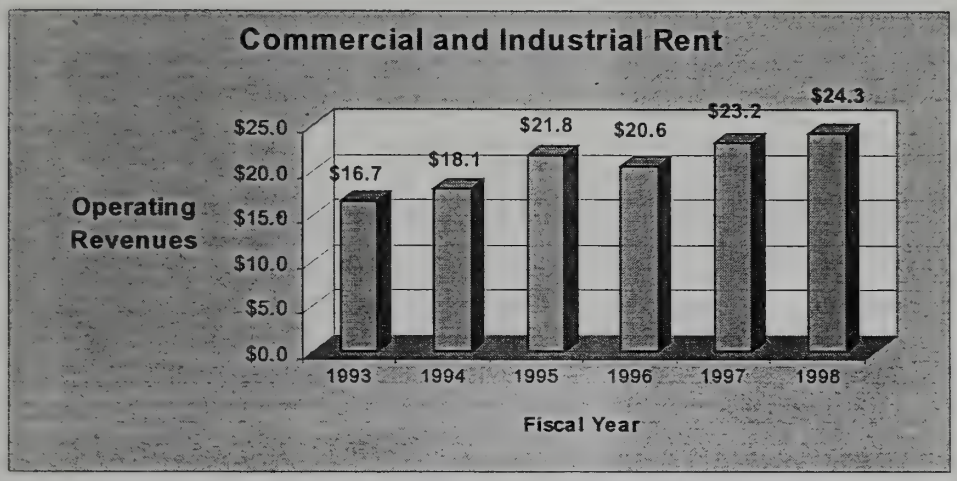
The Port has one of the most varied maritime business portfolios of any Port in the United States. While many ports focus primarily on cargo shipping, San Francisco is involved in cargo, cruise shipping, ship repair, sport and commercial fishing, ferries, excursions and harbor services.

Changes in the ocean carrier business have caused the Port to reduce its dependence on cargo shipping revenues, and to rethink its maritime marketing strategy. Since fiscal year 1992-93, operating revenue from cargo operations has declined from $7.5 million to $1.4 million. The Port anticipates maintaining this current level and will continue to market to container, bulk, neo-bulk, and project cargo vessels, including infrastructure and building projects, lay berths, raw material processing and storage, and warehousing and distribution centers.



D. Real Estate Operations

In 1994 the Port began to focus on the revenue-generating potential of its vast real estate holdings. The Port began to increase it's marketing efforts with two goals in mind: (1) to maximize revenue, and (2) to maintain flexibility while the Waterfront Land Use Plan was being developed. This has resulted in a 45% increase in operating revenues from real estate leasing in the past five years.



Rental property leases represent diverse uses of Port property, which range from traditional maritime and fishing uses, to tourist related retail uses (such as Pier 39), office space (such as the Ferry Building), passenger excursion and ferry terminals, and a new ballpark. As of June 30, 1998 the Port managed 653 leases representing the following uses:

Mix of Rental Property Leases

	Number of Leases	Square Footage	Estimated % Annual Lease Income
Industrial	224	6,504,817	30.16%
Retail/Restaurant	59	512,953	20.87%
Office	264	980,368	17.96%
Parking	20	473,450	7.44%
Mixed Use	10	1,567,231	7.20%
Ferry/Excursions	13	226,218	5.88%
Ballpark	1	544,500	3.82%
Cargo Terminals	2	1,881,438	1.98%
Other	27	162,077	1.44%
Land tours/transportation	7	36	0.96%
Marinas	3	2,265,357	0.66%
Recreation/Visitor Attraction	3	120,600	0.61%
Utilities	14	8,383	0.51%
Public Use	6	405,993	0.50%
Total	653	15,653,421	100.00%

E. Financial Performance

Net income has improved significantly from a loss of ($449,000) in fiscal year 1993-94 to net income of $16,475,000 for fiscal year 1997-98. The net income reported for fiscal year 1997-98 includes $8.5 million in federal and state congestion relief funds that the Port received in exchange for granting certain property rights needed for the Mid-Embarcadero Roadway project. Excluding this one time non-operating income, the Port earned net income of $8.0 million, an 11.9% increase over income posted for fiscal year 1996-97.

The significant increase in earnings is due to strong operating revenue growth which can be attributed to stepped-up real estate marketing and the strong bay area economy. The following presents a summary of revenue and expenses for the previous five years.

(In Thousands) Years Ended June 30	1998	1997	1996	1995	1994
Operating Revenue	$38,490	$37,286	$32,057	$32,212	$32,431
Operating Expenses	(30,018)	(29,877)	(26,745)	(28,222)	(30,134)
Operating Income	8,472	7,413	5,312	$3,990	$2,297
Other Income (Expense)	8,003	(305)	(1,307)	(989)	(2,746)
Net Income (Loss)	$16,475	$7,108	$4,005	$3,001	($449)

From fiscal year 1993-94 to fiscal year 1995-96, revenue remained relatively stable and operating expenses decreased 11%. The Port was able to reduce operating expenses by refunding its existing revenue bonds, resulting in annual savings of approximately $900,000 beginning in fiscal year 1994-95, and by a 14% reduction in the labor force. From fiscal year 1995-96 to fiscal year 1997-98 operating revenues increased 20% while operating expenses increased only 12%.

Port properties generated $38.5 million in revenue in fiscal year 1997-98 and $37 million in audited revenues in 1996-97 as shown below:

Business Line	**Fiscal Year June 30, 1998 Audited Revenue**	**Fiscal Year June 30, 1997 Audited Revenue**
Commercial and Industrial Rent	$24,317,000	$23,218,000
Parking	5,536,000	3,732,000
Cargo	1,400,000	1,974,000
Ship Repair	1,188,000	1,237,000
Commercial Fishing	1,187,000	1,162,000
Other Maritime	1,111,000	563,000
Harbor Services	775,000	689,000
Cruise	547,000	619,000
Power	264,000	710,000
Miscellaneous	2,165,000	3,403,000
Total	$38,490,000	$37,290,000

For more detailed financial results, see the audited financial reports for fiscal years ending June 30, 1998 and June 30, 1997 presented in APPENDIX B.

III. SCOPE OF WORK

The Consultant shall provide qualified personnel for the development of an Economic Impact Report (the "Report") for the Port of San Francisco. The Report should assess the present Port activities, including, but not limited to, 1) Port industries, 2) Port users, 3) Port tenants, and 4) construction projects. In addition, the Report should assess the future economic impact over the next ten years of new development and real estate uses currently planned by the Port.

The economic effect of these activities should be assessed by evaluating the following:

A. The direct economic effects of Port activities including the spending and employment generated by Port activities.

B. The indirect economic effects of Port activities, including the effects on other industrial and service sectors caused by the direct activity, including the inter-industry economic activity supported by the purchases of supplies, services, labor, and other inputs.

C. The induced economic effects of Port activities, including the economic activity that comes from household purchases of goods and services made possible because of the wages generated by the direct and indirect economic activities.

D. Measures of the economic activity of the Port, including:
   1. Sales revenues, or output, of firms and organizations
   2. Wages or income of persons employed in the impact industries
   3. Employment/number of jobs attributable to the economic activity
   4. Taxes collected within the study area

The Consultant shall clearly identify the methodology used to prepare the Report, as well as the basis for all assumptions used.

As a result of this project, the Consultant shall produce an economic impact report, an input/output computer model together with an instruction manual. The report will serve as a benchmark study that the Port can then update from year to year in-house. This report should include the use of surveys, the development of a measure for the multiplier effect, the selection of a base year given the timing of the report, and the determination of the region to be measured. The report may also discuss non-quantified benefits of the Port, such as the social benefits of environmental programs and transportation alternatives.

The report is intended for use by Port staff, the general public, Port users and tenants, legislators, and regulatory agencies.

Proposals are requested from firms interested in providing these services.

IV. TERMS AND CONDITIONS

Subcontracting any portion of the work required under the RFP requires written approval of the Port. This requirement will not relieve the respondent from satisfying MBE/WBE participation goals nor prevent respondents from forming joint ventures with MBE/WBE firms.

V. CITY REQUIREMENTS

A. Human Rights Commission Requirements

San Francisco Administrative Code Chapters 12B and 12D, as amended, are hereby incorporated by reference as though fully set forth. Copies of both Chapters 12B and 12D and their implementing Rules and Regulations are available upon request at the Human Rights Commission office: 25 Van Ness, #800, San Francisco, CA 94102 or by calling (415) 252-2500.

1. The Rating Preference Pursuant to Chapter 12D, the following rating preference will be in effect for the award of this project. The rating preference applies to each phase of the selection process. The application of the rating preference is as follows:
   (a) 5% for all HRC certified economically disadvantaged LBEs
   (b) 5% for each joint venture that is composed of only economically disadvantaged LBEs with no local MBE or WBE prime participation or where the local MBE/WBE participation is less than 35% (a joint venture that includes a non-LBE partner is not eligible for rating discount).
   (c) 5% for each joint venture which includes at least 35% (but less than 40%) prime participation by certified local MBEs or WBEs.
   (d) A maximum of 7½% for each joint venture that includes 40% or more in prime participation by certified local MBEs or WBEs.
   (e) 10% for each joint venture between two certified local MBEs and/or WBEs.
   (f) 10% for each certified local prime MBE or WBE.

   The rating discount will be applied by adding 5%, 7½%, or 10% (as applicable) to the score of each firm eligible for a discount for purposes of determining the highest ranked firm.

   A joint venture shall receive the aforementioned appropriate rating preference when the MBE or WBE partner is an active partner in the joint venture and performs the work, manages the job and takes financial risks in proportion to the required level of participation stated in the RFP response.

   Businesses eligible for the MBE/WBE/LBE rating preference are only those businesses that are local, economically disadvantaged Minority/Women owned and local, economically disadvantaged non-minority/women owned businesses.

2. Forms to be submitted
   (a) All respondents are to complete and return with their proposal one copy each of HRC Forms 1, 2A, 3, 4, 5A, 5B and 12B-101 (as applicable). These forms should be submitted in a separate envelope addressed as follows:

   "HRC Forms for Consultant to Prepare an Economic Impact Report"
   Attn: Preston Tom
   Port of San Francisco
   Ferry Building, Suite 3100
   San Francisco, CA 94111

3. Human Rights Commission ("HRC") Program for Employment Opportunities
   (a) Please refer to Appendix A regarding the HRC requirements for consulting contracts (HRC Attachment 3). If you have any questions concerning the program or the HRC forms, please call Preston Tom at (415) 274-0498.

B. Other City Requirements

The Consultant will be required to comply with the City's Standard Contract Provisions including, but not limited to, the following:

1. *MacBride Principles—Northern Ireland*: The City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq.

The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

2. *Tropical Hardwood Ban*: The City urges companies not to import, purchase, obtain or use, for any purpose, any tropical hardwood or any tropical hardwood product.

3. *Burma (Myanmar) Business Prohibition*: The Consultant can not be the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. In the event that the Consultant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, the Consultant shall be liable for liquidated damages for each violation in an amount equal to the Consultant's net profit under the contract, or 10% of the total amount of the contract, or $1,000, whichever is greatest.

4. *Equal Benefits Ordinance*: The Consultant must comply with Chapters 12B and 12D of the San Francisco Administrative Code which pertain to non-discrimination and affirmative action in employment, and prohibit discrimination in the provision of benefits between employees with domestic partners and employees with spouses. Consultants that respond to this RFP must submit form HRC 12B-101, as well as 12B-102 and 12B-103, if applicable, (attached as a part of Appendix A) as evidence of compliance with Chapter 12B; and Consultants are instructed to take note of Section 3 of form 12B-101 concerning documentation requirements.

C. Prohibition on Contributions to Candidates

No person who contracts with the City and County of San Francisco, for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates at any time between commencement of negotiation and either the completion of, or the termination of, negotiations for such contract.

VI. INSURANCE REQUIREMENTS

A. The Consultant will maintain in force, during the full term of the contract, insurance in the following amounts and coverage:
   1. Workers' Compensation Insurance, including Employers' Liability limits not less than $1,000,000 each accident, $1,000,000 per disease, and $1,000,000 per occurrence. Consultant's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event The Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by the Department of Industrial Relations Administration of Self-Insurance, State of California.
   2. Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability and Personal Injury.
   3. Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-owned and Hired auto coverage, as applicable.

B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
   1. Name as Additional Insured the City and County of San Francisco, the Port Commission, its Officers, Agents, and Employees.

2. That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that such insurance applies separately to each insured against whom claim is made or suit is brought.

C. All policies and bonds shall be endorsed to provide thirty (30) days advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following address:

Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111
Attention: Finance Manager

D. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.

E. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

F. Certificates of insurance and endorsements, in form and with insurers satisfactory to City, evidencing all coverage above shall be furnished to the Port at the above address before commencing any operations under this contract, with complete copies of policies delivered promptly upon City request.

G. Approval of the insurance by City shall not relieve or decrease the liability of The Consultant hereunder. In addition to the insurance requirements stated herein, the Consultant will be required, prior to commencement of work, to enter into a written agreement with the City whereby the Consultant agrees to indemnify the City from any claims, damages or loss arising from the performance of the services contemplated by the RFP.

H. The contract shall terminate immediately, without notice to The Consultant, upon any lapse of required insurance or bond coverage.

I. If the Consultant is a joint venture or partnership, the joint venture or partnership shall be insured by any one of the following methods:
   1. Separate insurance policies issued with the joint venture or partnership as named insured.
   2. All insurance policies required by this contract for one of the participants will include the joint venture or partnership as named insured.
   3. Each participant to include the joint venture or partnership as named insured on each of their separate policies, but only with respect to the interests of that participant in the joint venture or partnership.

VII. PROPOSAL, FORMAT AND CONTENTS

Firms interested in providing the services described above are requested to submit the following information, in the order specified by sections as indicated below. Please be sure that each section provides answers for specific questions, includes all items requested, and does not exceed the specified page limits. **Failure to answer all questions asked in this RFP may result in the proposal being deemed non-responsive.** The deadline for

receipt of the proposal is **11:00 am on January 28, 1998**. Please respond to the following questions in the order provided below.

A. Section 1 – Introduction (5 page limit)

This section should consist of a one page letter of introduction signed by an authorized representative of the firm and an executive summary not to exceed four pages. The executive summary should highlight the proposal's key points. For joint ventures, the introduction should also clearly state which firm is seeking to serve as the lead consultant and which as the co-consultant, as well as the percentage of work that will be performed by each firm in the joint venture.

B. Section 2 –Firm Qualifications (6 page limit)

This section should include:

1. The address and telephone number of the office which will staff this engagement.
2. Name of the firm's representative designated as the day-to-day contact person.
3. A brief description of the firm's size nationally and locally, as well as the local organizational structure and qualifications. Explain how the organizational structure can be of benefit to the Port.
4. A statement describing both the local firm's analytical capacity and resources and the firm's national resources. Describe the firm's ability to provide the services required in SECTION III – "Scope of Work." Computer systems, staff size, and national experts who would be available to the Port are all relevant.
5. A description of related projects and specific situations during the past three years where the firm and/or members of the proposed project team have applied their consulting skills and abilities. Include names, addresses and phone numbers of clients who can be contacted as references.
6. The Port is especially interested in skills and abilities in the following areas: (a) knowledge and understanding of economic conditions and trends of public entities, including enterprise fund divisions, (b) responsiveness and attentiveness to clients' needs, (c) creativity, (d) analytic capability, and (f) oral and written communication skills.

C. Section 3 –Staff Qualifications (8 page limit)

The qualifications, experience, and expertise of the key individuals assigned to this project will have the greatest impact on the selection process, especially the project leader. Please be specific in addressing the following:

1. Provide a list of each individual on the project team, including their names, roles, and specific responsibilities. Please identify the person who will have day to day responsibility.
2. A description of the relevant experience and qualifications of each of the project team members. Include brief resumes. Provide references for each team member.

D. Section 4 – Fees

The Port intends to award this contract to the firm or firms that will provide the highest qualified consulting services to the Port. As with all professional services contracts, the Port reserves the right to accept other than the lowest price offered and/or to reject all proposals.

Please provide a fee quotation for compiling and producing an Economic Impact Report for the Port. Please include the hourly rates for each staff assigned, and the estimated amount of time it will take to complete the Report. **The fee quotation should be submitted in a separate envelope marked "Fee Quotation for Preparation of an Economic Impact Report."**

E. Section 5 – Compliance with City Requirements

This section shall include:

1. Signed and completed copies of the Human Rights Commission ("HRC") Forms 1, 2A, 2B, 3, 5A, 5B and 12B-101. These HRC Forms can be found in Appendix A of this RFP. If a joint venture rating preference is claimed on HRC Form 1, complete and submit HRC Form 4 with the proposal.
2. If claimed on HRC Form 1, MBE/WBE Certification forms must be submitted to the Port HRC Office by 11:00 a.m. on the submittal due date.

VIII. EVALUATION CRITERIA AND SELECTION PLAN

This section describes the guidelines that will be used for analyzing and evaluating the various proposals. A selection group comprised of Port and City staff will evaluate the proposals. This group will review the proposals based upon the stated evaluation criteria and determine which respondent will be selected. In an effort to reach a decision concerning the best-qualified respondent, the Port reserves the right to evaluate all factors it deems appropriate. Respondents are specifically prohibited from discussing this RFP with any Port or City employees other than the Port's Finance Manager. As part of the evaluation process, the Port reserves the right to request oral interviews with any or all of the respondents, at its sole discretion.

Evaluations will be conducted based on the criteria as set forth below. All proposals will be evaluated based on the following point system.

Evaluation Criteria	**Maximum Points**
Firm Experience	30
1. Specific experience with Ports, California municipalities, and other public entities and enterprise fund divisions.	
2. General Experience.	
Assigned Project Staff	35
1. Professional and academic qualifications.	
2. Recent experience as an economic consultant.	
3. General experience as an economic consultant.	
4. References.	
5. Availability to Port Staff.	
Ability to meet the Needs of the Port	35
1. Responsiveness to Port's needs and interests.	
2. Creative Ability.	
3. Knowledge and understanding of economic conditions and trends of public entities, including enterprise fund divisions.	
4. Communication Skills.	
Maximum Total Points	100

Note: MBE/WBE/LBE preference points, if any, are added after scoring of the above items. MBE/WBE joint ventures are strongly encouraged.

If oral interviews are desired by the Port following evaluation of written proposals, the interview will consist of standard questions asked of each firm and specific questions regarding each individual proposal.

IX. INSTRUCTIONS FOR SUBMISSION OF PROPOSALS

A. Financial Responsibility

The Port accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Proposal submissions will become the property of the Port and may be used by the Port in any way deemed appropriate.

B. Modification, Suspension, Etc.

No person or firm responding to this RFP shall obtain any claim or right of action against the Port by reason of any aspect of the RFP, and defects or abnormalities contained herein, or defects or abnormalities in the selection process, the rejection of any proposal, the acceptance of any proposal, any statements, representation, acts or omissions of the Port, the exercise of any Port discretion set forth in or with respect to any of the foregoing, and any and all other matters arising out of all or any of the foregoing.
The issuance of this RFP does not constitute an agreement by the Port that any contract will actually be entered into by the Port. The Port expressly reserves the right at any time to:

1. Waive any defect or informality in any response, proposal, or proposal procedure.
2. Reject any or all proposals.
3. Reissue a Request for Proposals.
4. Procure any service by any other means, including an alternative means of financing the Project.
5. Extend deadlines for accepting responses, or accept amendments to responses after expiration of deadlines.
6. Determine that no professional services are needed.

C. Addenda

Any change in the RFP will be made by written addendum issued to each firm to whom an RFP has been issued, and shall become a part of the RFP.

D. Delivery

Six (6) complete copies of your response to this RFP must be delivered as specified herein. **Submissions received after the time specified will not be considered for evaluation.** Submissions must be addressed to and delivered as follows:

"Proposal for Consultant to Prepare an Economic Impact Report"
Stephanie Downs
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

Two (2) copies of your fee proposal must be delivered in envelopes separate from the proposal response. Fee submissions must be addressed and delivered as follows:

"Fee Quotation for Preparation of an Economic Impact Report"
Stephanie Downs
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

One (1) copy of each of HRC Forms 1, 2A, 3, 4, 5A, 5B and 12B-101 (as applicable). These forms should be submitted in a separate envelope addressed as follows:

"HRC Forms for Consultant to Prepare an Economic Impact Report"
Attn: Preston Tom
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

X. CONTRACT NEGOTIATION AND AWARD

At the conclusion of the selection process, contract negotiations will be initiated with the highest ranked respondent. If a satisfactory contract cannot be negotiated, the Port may, at its sole discretion, begin contract negotiations with the next highest ranked firm and terminate negotiations with the highest ranked firm.

XI. PRE-PROPOSAL CONFERENCE

A Pre-proposal Conference will be held at the Port offices, Suite 3100 in the Ferry Building, at [9:00 a.m. on January 14, 1999 (*to be confirmed with directors*)]. All firms considering submitting a proposal are encouraged to attend.

XII. PROPOSAL AND REVIEW SCHEDULE

The proposal and review schedule is listed below. The following dates are subject to change at the discretion of the Port. Respondents will be notified by the Port, as appropriate.

Action	Approximate Dates
1. Issuance of RFP	December 28, 1998
2. Pre Proposal Conference	January 14, 1998
3. Proposal submission deadline 11:00 am Suite 3100 Ferry Building San Francisco, CA 94111	January 28, 1999
4. Qualifications and Proposal Evaluations	February 5, 1999
5. Oral Interviews (if needed)	February 11 & 12, 1999
6. Consultant Selection	February 17, 1999
7. Contract Negotiation Begins	February 17, 1999
8. Port Commission Approval	March 9, 1999

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
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MEMORANDUM

December 10, 1998

TO: MEMBERS, PORT COMMISSION
Hon. Denise McCarthy, President
Hon. Kimberly Brandon, Vice-President
Hon. Michael Hardeman
Hon. Brian Thomas McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director

SUBJECT: Adoption of Ferry Building Leasing Plan Parameters

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

BACKGROUND

On September 8, 1993, the Port Commission approved Resolution No. 93-127 authorizing the Executive Director to approve and execute leases that conform to all of the Leasing Parameters set forth in Resolution No. 93-127 and 93-135. The Leasing Parameters provide that leases so approved and executed shall have rents that conform to the Rental Rate Schedule adopted periodically by the Port Commission.

As a response to the upturn in the San Francisco Rental Market, Port staff retained the real estate appraisal firm of Clifford Associates to conduct comprehensive studies of the office and industrial rental markets as they relate to the Port's properties. These studies included overall analyses of the respective rental markets, extensive surveys of rental comparables, and surveys of Port properties and lease terms. The findings, conclusions, and recommendations of these studies are presented in two Market Rent Survey Appraisal Reports prepared by Clifford Associates, one for the office market and one for the industrial market. On May 5, 1998, the Port Commission adopted the Updated Rental Rate Schedule (by Port Resolution 98-34).

THIS PRINT COVERS CALENDAR ITEM NO. 9A

	Current Minimum Initial Rent Rate Range	Median
Ferry Building Interior offices	$1.50 - $1.94	$1.72
Ferry Building Exterior offices	$2.12 - $2.59	$2.36

Many existing Ferry Building office tenants have already had their rent increased to market rate through expansions, relocations or, where possible, 30-day notice of rent increase. This has increased monthly income by over $15,000 per month in the last six months. Out of approximately 148 leases in the Ferry Building, only 12 have terms beyond December 1, 1998. The remaining leases are on a month-to-month basis which can be terminated by either party upon thirty day written notice. Port staff has been reluctant to offer terms beyond month-to-month for several years, because of the planned rehabilitation of the Ferry Building.

Port staff has developed the following plan for interim leasing in the Ferry Building to stabilize occupancy prior to the renovation of the Ferry Building:

Goals and Objectives

Increase Revenues. Many of the tenants in the Ferry Building and World Trade Center pay rents that are well below the market value for their premises. In some cases this is due to the age of the lease or the fact that cumulative CPI increases have not kept pace with the market.

Standardization of Lease Document. Over the years there have been substantial changes in real estate laws, amendments to Port policies and additional City Ordinances which are not uniformly reflected in the current leases. The Ferry Building Leasing Plan would create consistency in lease documentation.

Provide Financial Stability to the Port and Tenants. Only 12 tenants have terms beyond December 1, 1998. The rest are on month-to-month agreements that can be terminated by either party upon thirty days written notice. Offering the tenants a term lease, even for only one year, would add some certainty to their occupancy and would protect the Port's cash flow for the next year.

Proposed Leasing Plan

Upon Commission approval, Port staff is prepared to implement a plan for upgrading the leases in the Ferry Building that would include:

New Office Leases. New office leases will be negotiated pursuant to the Commission approved Leasing Parameters and the Updated Rental Rate Schedule.

Existing Office Leases. For existing office tenants only, Port staff proposes to amend the Updated Rental Rate Schedule as follows:

1. Determine a median rent value ("Median Rent") by averaging the Commission approved Minimum Initial Rent Rates for interior and exterior office space. (Interior becomes $1.72/sq. ft. and exterior $2.36/sq. ft.).
2. Discount the resulting Median Rent by 15% to obtain the discounted rent ("Discounted Rent"). (This results in a rent rate of $1.46/sq. ft. and $2.00/sq. ft., respectively).
3. Rent will be increased for current month-to-month tenants by 75% ("New Rent Rate"). However, no tenant's rent will be increased to an amount greater than the Discounted Rent.
4. Enter into new leases at the New Rent Rate for terms which will expire no later than December 31, 1999.

Existing Month to Month Retail Leases. There are currently three existing month to month retail tenants in the Ferry Building; Bay Blossoms, The Conference Room and Ferry Plaza Business Services. Port staff has determined that it is impractical for the Port to bid the three existing retail leases in the Ferry Building due to: (1) the Port cannot offer long-term leases in the Ferry Building prior to the renovation of the building; and, (2) it would not be feasible for a new tenant to amortize improvement costs over a one-year term.

Existing and New Storage Leases. Renegotiate storage leases at $0.70/sq. ft. Port staff has concluded that this rate represents fair market rent for these spaces. This is the rate at which the Commission has recently approved several new storage leases.

Current projections are that the monthly rent increase of the 54 tenants affected will generate an additional revenue to the Port in the amount of $10,852.33 per month or $130,227.96 annually.

RECOMMENDATIONS

With the adoption of the Ferry Building Leasing Plan Parameters, Port staff will be authorized to enter into leases with existing tenants without specific Port Commission approval of each lease provided that the lease conforms to all the Ferry Building Leasing Plan Parameters and Rent Rate Schedule discussed above.

Port staff recommends adoption of the Ferry Building Leasing Plan Parameters.

Prepared by: Philip M. Smith, Director of Real Estate

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 98-123

WHEREAS, Section 3.581 of the City Charter empowers the Port Commission to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Under Section 3.581 of the City Charter, leases granted or made by the Port Commission shall be administered exclusively by the operating staff of the Port Commission; and

WHEREAS, by Resolution No. 93-127, adopted September 8, 1993, this Commission authorized the Executive Director to approve and execute leases that conform to all of the Leasing Parameters set forth in Resolution No. 93-127 and 93-135; and

WHEREAS, said Leasing Parameters provide that leases so approved and executed shall have rents that conform to the Updated Rental Rate Schedule last adopted by the Port Commission on May 5, 1998, pursuant to Resolution 98-43; and

WHEREAS, it is impractical for the Port to bid the three existing retail leases in the Ferry Building due to: (1) the Port cannot offer long-term leases in the Ferry Building prior to the renovation of the building; and, (2) it would not be feasible for a new tenant to amortize improvements over a one-year term; and

RESOLVED, that this Commission hereby approves and adopts the Ferry Building Leasing Plan Parameters, as outlined in Memorandum to Port Commission for Agenda Item 9A for its December 17, 1998 meeting.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 17, 1998.

_____
Secretary

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

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MINUTES OF THE SPECIAL MEETING
THURSDAY, DECEMBER 17, 1998

1. ROLL CALL

The meeting was called to order by Commission President Denise McCarthy at 3:05 p.m. The following Commissioners were present: Denise McCarthy, Kimberly Brandon, Michael Hardeman and Brian McWilliams. Commissioner Pius Lee was not present.

2. APPROVAL OF MINUTES

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. The minutes of the November 6, 1998 Special meeting were adopted.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. The minutes of the November 10, 1998 Special meeting were adopted.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. The minutes of the November 17, 1998 Special meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report:

Mr. Wong wished all the Commissioners, staff and members of the audience a Merry Christmas and a Happy New Year. Mr. Wong noted that this has been a very successful and rewarding year and extended his appreciation to the Commission and staff for their hard work and support throughout the year.

Mr. Wong introduced the new Port centennial book and thanked Renee Dunn and Nancy Olmsted for their efforts. There was an overwhelming response to the book and it will be released at bookstores next week. The Commission was provided an autographed copy of the book. Port staff and Commissioners can purchase additional books at a discounted rate of $20.

Commissioner McCarthy reported that she, Commissioner Brandon and Peter Dailey have just returned from Mexico for the Mayor's Business Development and

Friendship Mission. The Mayor, Supervisor Medina and other City delegates were also in attendance. In Mexico City, they met with the CEO and other senior management of Transportation Maritima Mexicana (TMM) and signed a preliminary agreement. Mr. Carroll, TMM's CEO, intends to visit the Port when the first ship arrives in December and again in February. In Mexico City, they received briefings from the Mexican Ministers of Finance, Commerce and Tourism. In Acapulco, they met with City and State officials and signed a sister Port agreement with the Port of Acapulco to increase future cruise business from Acapulco and other Mexican ports to San Francisco. Based on the welcome they received and their dealings with TMM, she emphasized the importance for the Maritime Division to meet and greet customers as often as possible. They were overwhelmed by the visit by the San Francisco delegates and Commissioner McCarthy hoped that we would be able to reciprocate their hospitality when they visit the San Francisco, building mutual trust and new business.

4. MARITIME

A. Approval of the 5-year Marine Terminal Agreement with Mexican Line Limited at Pier 80 and authorize the Executive Director to seek approval by the San Francisco Board of Supervisors to amend the agreements to include a mutual indemnity clause. (Resolution No. 98-120)

Peter Dailey, Director of Maritime, requested Commission's approval of the 5-year Marine Terminal Agreement with Mexican Line Limited (a wholly-owned affiliate of Transportation Maritima Mexicana) at Pier 80 and authorize the Executive Director to seek approval by the San Francisco Board of Supervisors to amend the agreements to include a mutual indemnity clause.

Effective December 1998, the Serpac Group (TM Grancolombiana (TMG), Columbus Line and Chilean Lines) will disband their joint operating agreement, and Chilean Lines will cease Northern California calls. A new joint service will be formed that will include Mexican Line Limited (TMM/TMG), Columbus Line and Maruba s.c.a. The new service will provide additional revenue for the Port through increased cargo volumes and vessel calls.

While all the carriers involved in the new joint service already call at the Port, the current contracts on file are being cancelled and reissued to reflect the new service structure and partnerships. The Port has concluded negotiations for a new five-year Marine Terminal Agreement with Mexican Line Limited (a wholly owned affiliate of Transportacion Maritima Mexicana) offering a joint service to and from Mexico, Central and South America. Their vessels are expected to make a weekly call with their first vessel in the new service expected in the middle of December 1998. While they offer a joint service with the carriers mentioned above, they have elected to sign a separate Marine Terminal Agreement for each company.

Material provisions of the agreement include the following: (i) five year term, commencing on December 1, 1998 with the ability of either party to terminate as of

each November 30th; (ii) reduced wharfage and dockage rates based on the total annual volume; (iii) nomination of Pier 80 as their regular published Bay Area port of call.

If Marine Terminals Corp. ceases operations at Pier 80, the Agreement also allows termination by either Port or Carrier if they are unable to reach agreement with a new management contractor.

The Agreement contains an indemnity where Mexican Line Limited agrees to indemnify Port and City for claims resulting from its acts wherein or omissions at the facility. The Port's standard exculpation clause, under which the Carrier waives all claims against Port and City including claims due to Port on City's negligence, has been deleted from these Agreements pursuant to Mexican Line Limited's request. In addition Mexican Line Limited has requested an indemnity from the Port and City against claims caused by Port or City's negligence. The City's Charter requires any indemnities by the City or Port to be approved by the Board of Supervisors. The Agreement provides that upon approval by the Board, the parties will sign an amendment to the Agreements to include the Port and City's indemnity. If the Board disapproves the indemnity, Mexican Line Limited may terminate their Agreements upon 30-days–prior written notice.

Estimated annual revenue for the agreement is approximately $490,000 from wharfage, dockage, and crane rental, which is to be shared with MTC per our management agreement with them.

Mr. Dailey indicated that the first AMPAC vessel is due today. TMM's first ship is due later in the month. They visited Mexico City as part of the Mayor's business development and friendship mission. Having the Mayor, Supervisor Medina and Commissioners McCarthy and Brandon as part of the delegation was a wonderful opportunity to market the Port of San Francisco. TMM was very impressed by the Port's commitment. The Port will have a reception for TMM on February 25 to celebrate its new service. The Mayor is expected to attend.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-120 was adopted.

5. REAL ESTATE

A. Adoption of Negative Declaration and approval of Memorandum of Understanding with the Department of Public Transportation (MUNI) for all of Seawall Lot 354 located at the southeast corner of Marin Street and Indiana Street for use as a vehicle maintenance facility. (Resolution No. 98-121)

Mr. Philip Smith, Director of Real Estate, indicated that the Department of Public Transportation ("MUNI") has approached the Port to lease, via a Memorandum of

Understanding, 25,145 square feet of shed space, 1,319 square feet of office space, 75,787 square feet of paved yard and 18,700 square feet of unpaved yard at Seawall Lot 354 ("SWL 354") located at the southwest corner of Marin Street and Indiana Street bound by Marin Street to the north, Tennessee Street to the east, Islais Creek to the south and Indiana Street to the west.

MUNI proposes to utilize SWL 354 as a temporary vehicle storage, fueling, maintenance and repair facility during MUNI's renovation of its Woods and Kirkland vehicle storage, fueling, maintenance and repair facilities. The proposed combined rent for the SWL 354 facility is $29,520.00 per month. The proposed MOU term is 30 months.

MUNI first proposed an operation of maintenance facility on this site in 1989. Part of that proposal, a Negative Declaration relative to such uses was adopted in June 1989. Based on a September 1998 analysis, it is the opinion of the San Francisco Planning Department Office of Environmental Review that no additional environmental review is required pursuant to the California Environmental Quality Act (CEQA).

Mr. Smith requested Commission's approval to adopt the CEQA findings relative to the Negative Declaration and subsequently approve the MOU. He indicated that the deal was prepared and negotiated by Nic Dempsey, the Port's Leasing Manager.

Commissioner Brandon commented that it has taken a little over a year for the Southern Waterfront Advisory Committee to be set up and has been in existence for the last 3-4 months. A lot of things are transpiring at the Southern Waterfront and it would be beneficial for the Port to obtain the committee's opinion or recommendation prior to staff presenting it to Commission for its consideration.

Mr. Smith indicated that not only will staff take the Commissioner's suggestion but they have already implemented the process to approach the committee and solicit their opinion. Port staff has scheduled meetings to create some synergy.

ACTION: Commissioner Hardeman moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 98-121 was adopted.

6. FACILITIES & OPERATIONS

A. Approval to execute Contract Modification No. 3 for Construction Contract No. 2611, "Ferry Plaza and Piers 27 & 29, Earthquake Repair Project, Pile and Deck Repair" with San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipelines, a Joint Venture. (Resolution No. 98-116)

Mr. Alex Lee, Director of Facilities & Operations, requested Commission's

approval to authorize staff to execute Contract Modification No. 3 for Contract 2611 to San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipelines, a joint venture, for the repair of earthquake damage to piles and deck at the Ferry Plaza and Piers 27 and 29.

The scope of the contract includes seismic repairs and mitigation work on the battered (non-vertical) piles. The repairs at the Ferry Plaza were most critical due to its location directly over the BART trans-bay tube. Seven bids were submitted to the Port, ranging in price from $4,659,000 to $13,304,000. On September 26, 1995, the Port Commission awarded Contract No. 2611 to the lowest bidder, San Luis Gonzaga/Ranger Pipelines/Bay Pacific Pipelines, a Joint Venture ("Contractor") for $4,659,000, with a $470,000 contingency for possible contract modifications. FEMA and OES agreed to fund the initial contract amount. As work progressed, it was necessary to modify the contract due to differing site conditions and the need for additional materials beyond original estimates.

The first contract modification resulted from unforeseen conditions discovered during the repair of three broken vertical piles at Pier 27 & 29. The additional work included placement of rebar, pile jackets, and underwater excavation to uncover the base of the piles.

During the actual work, the actual quantities of grouting for deck repairs at the Ferry Plaza and Pier 27 substantially exceeded that estimated in the Port contract documents. Port staff verified the need for the additional grouting and the contractor's actual performance of the work. The two contract modifications totaled $442,440, which was within the contingency fund of $470,000 previously authorized by the Commission. Contract Modification No. 3 is required to authorize payment for additional work caused by unforeseen site conditions.

On May 2, 1996, the Contractor submitted a letter to the Port, requesting a modification of the contract. The reason for the request was that the batter angle and polar orientation of the batter piles were different from those shown on the contract plans, which all contractors had used to prepare their bids. On June 19, 1996, the Port rejected the Contractor's request. At that time, Port staff did not believe that the pile batter/polar orientation discrepancy made a material difference. On October 17, 1996, the Contractor submitted a clarification letter, which better defined the problem with the discrepancy. Shortly thereafter, Port staff met with the Contractor and directed the Contractor to proceed with the work. Both parties agreed that the cost settlement would be resolved at the end of the work to avoid additional delays in the completion of the project.

The Contractor substantially completed work in March 1998. In April 1998, the Contractor submitted its cost documentation and requested a final contract modification for $931,676.05. Port staff negotiated the cost down to $654,917.

The major component in Contract Modification No. 3 is the increased cost triggered by the differing field conditions of the battered piles. Staff's evaluation

that these were unforeseeable differing site conditions and therefore not the full responsibility of the Contractor rests upon the following factors:

- The Port's as-built drawings (drawings intended to show the way the piers were actually constructed) incorrectly showed the piles to be of uniform batter and polar orientation. The Contract 2611 plans reflected the uniform batter/orientation which had been shown on these as-built plans. All contractors used the Contract 2611 plans to bid the contract.

- A reasonable Contractor could not detect the pile batter/orientation difference by inspecting the piles from a boat under the piers.

- Based on the Port's plans, the Contractor bid the contract on the premise that all pile connection frames could be prefabricated off site, would be the same shape and size, and would be delivered for installation at the job site. The connection frames are the steel devices designed to connect the pier cross beams to the batter piles.

- During the project, when the Contractor installed the scaffolding under the piers to take accurate measurements for retrofitting, it discovered that each pile had a somewhat different batter angle and polar orientation. This meant that each connection frame would have to be field measured, custom designed and custom fabricated, substantially increasing the cost of the project. No two frames would be the same.

In summary, Modification No. 3 includes the following:

a. Custom fabricating the structural steel connection frames to accommodate the existing pile geometry. As-built plans for the deck indicated that the piles had been installed uniformly with consistent batter angle and orientation. However, the exact geometry of the existing piles was unknown until the commencement of work. Each pile was located at a different batter and polar angle than every other pile, which required custom measurement, design and fabrication of each of the 250 pile repair connection frames. The contractor demonstrated that it did not include the custom measurement, design and fabricating in its bid. Cost: $534,878

The two additional cost issues incorporated into Modification No. 3 are as follows:

b. Coring through the concrete deck reinforcing steel: The construction drawings instructed the contractor to avoid cutting the reinforcing steel in the concrete deck. However, due to the random pattern of the rebar in the deck, it was virtually impossible for the contractor to determine the location of the steel. As a result, the contractor was required to cut

thousands of steel bars to install the pile repair frames, which was not included in the original scope of work. The contractor demonstrated that it did not include the cost of this additional cutting in its bid. Cost: $90,122

c. To prolong the maintenance-free life of the pile frames, nuts, and bolts, the Port recommended a contract change to coat these items with a bitumastic coating. Cost: $29,917

FEMA and OES prepared Damage Survey Reports ("DSRs") for all of the original contract work. Port staff has requested that FEMA prepare supplemental DSRs for the three contract modifications. However, the current FEMA policy for projects at this stage of completion is for the project "close out" process to occur, after which one supplemental DSR will be written to address the additional project costs. Port staff expects FEMA's agreement to fund these additional costs, but the extent of additional funding will not be known for several months. Funds from the supplemental appropriation for earthquake repairs will be needed for any work not covered by DSRs.

Port staff requests authorization to execute contract Modification No. 3, resulting from differing site conditions. Port Staff is seeking funding for this modification from OES and FEMA as part of FEMA's project close out process.

Commissioner McWilliams asked for an explanation of the negotiated price and the price of the change order. Mr. Lee responded that the contractor submitted a claim at the end of the contract work. Port staff and the contractor met and negotiated the price based on the standard unit price. Commissioner McWilliams indicated that based on the scenario that Mr. Lee mentioned, the payment process was not authorized by the Commission. Mr. Lee indicated that at the time, staff knew the magnitude of work but did not know the cost.

Commissioner Brandon indicated that she was not in support of the resolution due to the fact that staff did not know how much the modification would cost the Port and staff did not seek Commission's approval prior to negotiating the price. Although staff was able to negotiate the price down, she could not vote affirmatively on this item.

Commissioner McCarthy commented that she received a briefing from Mr. Lee but indicated that staff needs to make certain that this kind of request comes to the Commission prior to work being done. It was her understanding that the work was done, the work has been accepted and there are not a lot of choices. The Port normally allows a 10% contingency which gives staff the ability to use it in a way they see fit but anything over should be brought back to the Commission for authorization.

ACTION: Commissioner Hardeman moved approval; Commissioner McWilliams seconded the motion. Three of the Commissioners were in favor; Resolution No.

98-116 was adopted. Commissioner Brandon cast the dissenting vote.

B. Approval to advertise the Downtown Ferry Terminal project. (Resolution No. 98-117)

Mr. Alex Lee, Director of Facilities & Operations, requested Commission's approval to authorize staff to advertise for competitive bids for construction of the Downtown Ferry Terminal project. Construction of the ferry terminal would enhance regional ferry service to and from downtown San Francisco together with the Mid-Embarcadero project and the upcoming Ferry Building development project.

He acknowledged the following Port employees who worked diligently on this project: Veronica Sanchez, Alec Bash, and Joe Roger and Nita Mizushima, the project manager of this project.

Ms. Mizushima mentioned the key benefits that the project will bring to the Port: (1) improve public access to the waterfront and (2) safe access to the terminal in the event of an earthquake, and (3) increase capacity for future ferry service. There will be a new south terminal

On July 16, 1998 the Port Commission authorized Port staff to award a consultant contract for construction management services for the Downtown Ferry Terminal Project to San Francisco Port Management Consultants (SFPMC). SFPMC has completed its constructability review of the draft contract documents, including the design plans and specifications. The design team (Port staff and consultant) is currently reviewing the proposed revisions for incorporation into the final design plans and specifications. The contract documents are scheduled for 100% completion in January 1999. Staff now recommends Port Commission approval for advertisement of the construction bid for this project.

The main project elements include the following:

Base Bid Elements:

- New South Ferry Terminal
- New Central Concourse / Breakthrough
- New Boiler Room
- Refinished South Arcade and East Promenade

Additive Bid Elements

- New North Ferry Terminal
- New Breakwater
- New Canopies for weather protection

Mr. Lee indicated that the construction cost is estimated at $13-14 million for the Base Bid and most of the Additive Bid Items including the new North Terminal and one of the Breakwater Additive Bid Items. The duration of the project would be approximately fifteen months. Mr. Lee requested Commission's authorization for

staff to advertise for construction bids.

Commissioner Brandon inquired if this project has any impact on the remodeling of the Ferry Building. Mr. Lee replied that some of the elements will have an impact, particularly the boiler room. However, staff needs to move forward with the project because the funding deadline. Staff needs to install a temporary boiler room and will need to clear the back esplanade. Staff will finalize the plans in their negotiations with the Ferry Building developer. Engineering staff will work closely with Planning and Development group.

Commissioner McCarthy asked what the plan is if the bids are over budget. Mr. Lee replied that if it the bids are over budget, staff would reevaluate and decide whether to use capital plan funds. If the bids are within 10-20% over budget, staff will seek approval from the Executive Director and the Commission to authorize funds to be used from the capital plan. Commissioner McCarthy asked if staff expects the $13-$14 million would be sufficient for the entire project. Mr. Lee replied to the affirmative. If the is bid above the estimated cost, they will start taking the bid items out.

Ernestine Weiss was thrilled and delighted about the construction of the new ferry terminal. It will eliminate parking and car congestion and relieve the mess in the downtown area.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 98-117 was adopted.

C. Approval to advertise Contract No. 2656, "Hyde Street Harbor Waterside Facility and Public Access Improvement Project." (Resolution No. 98-118)

Mr. Alex Lee, Director of Facilities & Operations, requested Commission's approval to authorize staff to advertise for competitive bids for construction of the Hyde Street Harbor Improvement Project.

The main project elements include:

- a new marina consisting of a 60-berth fishing facility at Hyde Street Harbor, including an accessible gangway, floating walkways, berths, utilities, and associated dredging;
- new utilities along fish alley, including a new asphalt paved surface;
- partial demolition of the 490 Jefferson building to accommodate a new 24 car parking lot;
- a new parking lot at the north end of Hyde Street Alley to accommodate 21 parking stalls;
- a new bathroom and storage facility building near the new marina; and
- public and disability access from Jefferson Street to the public access area at the

north end of Hyde Street Alley.

The Bay Conservation and Development Commission has approved the permit for this project. Staff is anticipating receiving the Army Corps of Engineers permit by the end of December. In addition, the Mayor's Citywide Coordinator for Disability Access, the Fisherman's Wharf Advisory Committee, and the Environmental Quality Advisory Committee have approved the design for this project. The Port Commission previously accepted responsibility to manage a loan from the Department of Boating and Waterways in the amount of $3,500,000 for the design and construction of the Hyde Street Harbor improvements. In addition, the Port Commission has approved $1.05 million in Capital Funds to design and construct the improvements at the Hyde Street Harbor site.

Mr. Lee acknowledged Dan Hodapp's effort in addressing concerns of the diverse interest in the area and for managing the permit process, Roberta Schoenholz for chairing the Environmental Water Quality Advisory Committee and building consensus for the project and Carleen Ho, the project manager.

ACTION: Commissioner Hardeman moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 98-118 was adopted.

7. PLANNING & DEVELOPMENT

A. Consider and act on Mentmore/Mills Corporation's protest of the award of the Exclusive Right to Negotiate with Wilson & Associates for the rehabilitation and master lease of the Ferry Building for retail and office uses. (Note: Mills Corporation is not part of the formal complaint filed by Mentmore Development.) (Resolution No. 98-122)

Mr. Paul Osmundson, Director of Planning and Development, indicated that the staff report responds to a November 30, 1998, protest filed on behalf of the Mentmore/Mills Development Team regarding exclusive negotiation rights for the Ferry Building project. He pointed out that the Mills Corporation issued a statement that they are not a party to the Mentmore complaint and do not intend to file any protest.

The written protest letter submitted by Mentmore Mills objecting to Port Commission's decision of November 17, 1998 entering into exclusive right negotiations with Williams Wilson &Associates for the Ferry Building identified the following four issues

1. The President of the Port Commission had a publicly undisclosed conflict of interest that irreparably invalidated the Port Commission's vote on the competing proposals submitted to the Port.

2. Wilson did not comply with a fundamental RFQ/P and Supplemental Request

requirement to provide the Port with lease income that is not subordinated to debt or equity payments associated with the rehabilitation project.

3. An award to Wilson would violate both: (a) City Charter requirements that the Port award the lease to the offeror providing the highest economic return to the City; and (b) Administrative Code requirements that the Board of Supervisors may only approve lease arrangements that provide the highest economic return to the City.

4. The Port staff's evaluation was fatally flawed and prejudicial to Mentmore/Mills due to an improper scoring methodology that failed to recognize the primacy of economic return to the Port.

Noreen Ambrose, Port's General Counsel, indicated that there was an allegation that Commissioner McCarthy had a conflict of interest in voting on the Ferry Building development team selection. Prior to the vote, the alleged conflict was brought to the City Attorney's attention. The matter was investigated and the issue was discussed with Commissioner McCarthy and the other Commissioners were made aware of the issue. Notwithstanding the alleged conflict, Commissioner McCarthy felt that she could be fair in her assessment of the proposals and her decision in the selection of the Ferry Building development team. Most importantly, it was clear that there was no conflict of interest. The basis for the alleged conflict was that Commissioner McCarthy holds a salaried position with the Telegraph Hill Neighborhood Center (THNC), a non-profit corporation. A member of the THNC board of directors is a consultant to the successful development team. In order to establish a conflict of interest under the Political Reform Act, the Charter or the Administrative Code, it would be necessary to show that Commissioner McCarthy would have a financial interest in the outcome of the vote on the Ferry Building that was different from the effect on the general public. In this case, the source of income to Commissioner McCarthy is from THNC and not from a member of the board of directors. The consultant does not directly pay Commissioner McCarthy's salary and that any material benefit to the consultant acting as an individual representing a client that is unrelated to the nonprofit corporation is not considered a conflict. In addition, there was also an allegation that the vote violated Government Code Section 1090 and the San Francisco Charter on the theory that this would lead to a contract in which Commissioner McCarthy had a financial interest. The City Attorney concluded that Commissioner McCarthy has no financial interest in the Port's decision to enter into negotiations with Wilson, the contracting party. Mentmore/Mills has identified no financial benefit that would benefit Commissioner McCarthy as a result of the decision to negotiate with Wilson and that in the absence of any financial interest, there is no violation of Section 1090 and the Charter. Upon the conclusion of the investigation, there is no basis for the alleged conflict or decision of the vote. Commissioner McCarthy was acting properly in voting on the Ferry Building selection team.

With regard to Mentmore/Mills second issue that Wilson did not comply with a

fundamental RFQ/P and supplemental request requirement to provide the Port with lease income that is not subordinated to debt or equity payments, Mr. Osmundson indicated that staff believes that the allegation is wrong. Under Wilson's proposal, the obligation to pay to the Port both base rent and participation rent is not subordinate to developer debt or equity obligations. Although the amount of participation rent was based on a formula that included deductions from net operating income for debt service and return on equity, the obligation to make the payment to the Port as so calculated was senior to any developer debt or equity obligations. The RFP includes as one of the Port's criteria for the Ferry Building rehabilitation participation in future increased revenues. Each of the proposals, including the William Wilson and Associates proposal, included a mechanism for the Port to participate in future increased revenues.

The method of calculating "participation in future increased revenues" is a separate and completely distinct factor from whether or not any of the Port's income is subordinate to any developer debt or equity. One is a method of calculation of the Port's participation in the increases in the financial benefits generated by the development, and the other is a legal description of the order of seniority (or priority) of payments from the property between lease payments, debt service and equity return. In the proposal from William Wilson, payments to the Port under the lease will have priority over debt service and equity returns which will be subordinate to the lease obligations. Therefore, William Wilson did comply with the stated requirements in the RFP.

Legal Counsel Ambrose indicated that the third issue that was raised in the protest letter relies on the Burton Act, the Charter and the Administrative Code provisions that established standards of policies with respect to leasing opportunities. The staff memorandum provides the analysis in detail. To summarize, the argument is that the Charter requires the Port to lease the Ferry Building to the party that would yield the maximum profit to the Port. This provision applies only to projects that are not for trust purposes. It is the Commission's intent to pursue this project in consistent with the trust. The Charter standard does not come into play. There is a litany of positions and items in the record that reflect the Port's Commission's intent in this regard. Mentmore/Mills' argument that the maximum and profit standard requires that Mentmore/Mills be selected is based on the premise that the economic proposal has to be given primacy to the exclusion of all the selection criteria. The Port position is that Mentmore/Mills proposal was not the highest ranked proposal therefore they are not the highest responsible bidder and therefore its selection would not yield maximum profits overall, taking into account project feasibility and the other selection criteria. Even if that standard were applicable as applied, it would not result in Mentmore/Mills being entitled to the exclusive negotiation right.

The second point with respect to the Administrative Code follows similar analysis that the entire request for proposal process as identified in the RFP/Q establish the selection criteria which includes an addition to the economic proposal project feasibility and the qualifications of the developer. These things have to be

considered in their entirety in order to determine which project will be successful and actually yield public benefit and profit to the Port.

Mr. Osmundson responded to the fourth issue raised by Mentmore/Mills regarding the scoring methodology being inappropriate, fatally flawed, prejudicial to Mentmore/Mills, failing to recognize the primacy of economic return to the Port. Staff believes that argument is refuted, not required by law or consistent with the trust obligations. While staff understands that Mentmore/Mills might feel that the criteria should be more important, it would not be reflective of the often stated objectives for this project nor the selection criteria that were very clearly established in the RFP having to do with the rules and procedures for this competitive process. The RFP/Q listed qualifications, development concepts, economic proposal, project feasibility and understanding and ability to obtain regulatory approvals. These factors are critical to the ability to provide the maximum financial return to the Port. Staff believes that it would be misleading for the Port to have listed the factors in the order shown, and then pulled out a single factor, economic proposal, for primacy and heavier weighting.

The argument that the ranking was prejudicial to Mentmore/Mills ignores the substantial analysis and discussion contained in the Director's Recommendation, the appendices, the KMA and KPMG Peat Marwick report, the proposals and other supporting documents, all of which provide the basis for the Port Commission's determination. For the reasons stated, Mr. Osmundson concluded that Mentmore/Mills request that the Port Commission rescind its decision and schedule a new vote and that Commissioner McCarthy be recused from participation in the decision making process is without factual or legal merit.

Mr. Allan Joseph spoke on behalf of Mentmore. Mr. Joseph indicated that he served on boards where disappointed bidders have come before the board and expressed their concerns about the process and understood that the people appearing before him have invested a lot of time and money in their proposal and their careers and livelihoods are at stake. He always made sure of two things: (1) that all the requirements were followed and (2) that they have been fair. He asked the Commission to adopt the same approach. He highlighted the areas where they are in agreement and disagreement with the staff report. With regard to the conflict of interest issue, the rules are designed not only to deal with actual conflicts but also with the appearance of conflicts in order to maintain in a public entity not only the presence of fairness but also the clear appearance of fairness. The relationship between Commissioner McCarthy and the member of her board is outlined in their report. They believe there is a conflict of interest that should indicate that Commissioner McCarthy recuse herself. The City Attorney came up with an opposite conclusion. Given the complexity of the requirements and the fact that the people unwittingly are in violation of these requirements, it would seem to them that it would only be fair for Commissioner McCarthy to recuse herself to avoid the appearance of any conflict. He urged the Commission not to adopt that part of the proposed resolution, not because the Commission concluded that there is an actual conflict but because the Commission concluded that at least there is an appearance

of conflict.

Mr. Joseph indicated that the second issue is whether Wilson's proposal meets the requirement that rent to the Port be senior to repayment of debt and return in equity. He indicated that there is a requirement in the RFP that any rent income or other monies payable to the Port be senior to developer debt and equity obligation. Nobody questions that Mentmore meets this obligation by making its payment on gross income. Wilson's participation amount is after debt service and return on equity. The staff report states that the amount of rent can be calculated in any way the developer desires and that the RFP only requires that the obligation to pay that amount once it is determined be senior to the developer payments on debt and equity. The reality is that by taking this position, the staff report effectively weeds out the entire seniority requirement. By allowing Wilson to calculate its payment after it pays all of its expenses and debt service and pays a return on equity investment, Wilson has achieved indirectly what the RFP precludes it from doing directly. There is no practical way if Wilson is allowed to make the calculation in this manner, there is no practical way that it could ever be short of funds necessary to make its debt and equity payments. In other words, it has in effect made its debt and equity obligation senior by using the calculation in this manner. It allows Wilson to make assurance to its debt and equity holders that they will get their money and gives them a serious advantage over Mentmore in terms of what it can assure its debt and equity holders. There are two offerors operating on different approaches. They believe it is neither fair not in compliance with the RFP.

Mr. Joseph indicated that the third point is at the heart of their protest. They believe that the Port has the obligation to award the lease to the offeror providing the maximum profit to the Port. The staff report agrees with them and it does not contest the fact that if this lease is characterized as not for trust use, the Charter requires that the award be made to the offeror that would yield the maximum profit to the Port and this position was not presented to the Commission at its November 17 meeting. The Commission did not make its decision on November 17 on the assumption that the Commission has to make the award to the offeror who presented the maximum profit. There is also no question that the Mentmore proposal provides the maximum rental to the Port; the difference is $5 million on rent. Taking into account the shorter lease that Mentmore is offering versus the longer lease that Wilson is offering, it's a $13 million difference. They believe that its the Commission's obligation to make the award to the offeror providing the maximum rent which the Commission has not done by selecting Wilson for exclusive negotiations.

Mr. Joseph indicated that the primary disagreement between Port staff and Mentmore is that Port argues that this lease is a trust use. In making that statement and conclusion, the staff report does not contest the fact that they presented in their proposal that whether you measure it on square footage or rent income, 60-70% of the benefit is coming from non-trust uses. Only 30-40% of the square footage and rental will be for trust uses. The Commission must conclude that the dominant

usage will be for non-trust purposes. The Commission has the right to do this under the Charter. The award must be made to the offeror who provides the maximum return to the City. The staff report argues that the Commission would look away from these uncontested facts and take into account that the Ferry Building is a landmark and a transportation hub and therefore, in and of itself is a trust use. In response, he referred the Commission to the supplemental RFP of their November 30 proposal. It says, "in making a submittal, the developer should have a marketing plan to attract public trust uses." If this building were generically a trust use, there would be no need for this language in the supplemental request for proposals. Staff could make this argument about virtually any property under the Port's control. Any property under the Commission's control is necessarily a part of this Port and therefore a trust use. The non-trust use of the Charter would not have an effect.

Mr. Joseph indicated that in the staff report, Port staff indicated that Mentmore provides the highest rent but it does not provide the highest economic return because of the project feasibility factors. He requested that the Commission order an economic analysis be conducted by an independent organization to determine which offerors provide the maximum profit to the Port. This kind of analysis has been done on other projects in the City. That independent study would be extremely beneficial not only for the Commission's consideration but also for any proceedings that follow. If they prevail in this protest that this project is not trust use, it will have to be determined whether Mentmore provided the maximum profit. To have the independent study available would eliminate the need for further delay in the project in making a determination on who should be the lessee.

Mr. Joseph indicated Port staff argued that Mentmore was not responsive to the RFP criteria. He indicated that statement is inconsistent with the resolution adopted by the Commission under Resolution No. 98-70 (adopted July 28, 1998) which determined that all four developers met the qualification requirements and invited the four developers to submit proposals for rehabilitation and lease of the Ferry Building. All four developers submitted responses to the Port's invitation and request for proposals which complied with the submittal requirements stated in the RFQ/P and the Port's subsequent request. The Commission had already determined that all the offerors, including Mentmore, fully complied with the requirements.

Under the maximum profit argument, they believe there can be no question that Mentmore was responsive and the Charter requires award to the offeror providing the maximum profit. The only question is despite Mentmore's highest rent proposal, it somehow is otherwise not providing the maximum economic benefit and the sensible way to find out is by performing an independent evaluation.

With regard to the scoring methodology, he concurred with Commissioner Hardeman's comment that this was a 4-way photo finish. However, the scoring methodology did not reflect the 4-way photo finish. They believe that compliance with the requirements and fairness require that the Commission take into

consideration their request to eliminate the appearance of impropriety by recusing Commissioner McCarthy, appoint an independent organization to determine which offeror provides the maximum economic benefit to the Port, rescind its earlier vote and reevaluate its determination for exclusive right negotiations. They believe that serious issues have been raised that require thoughtful and thorough consideration and they request that the Commission give careful consideration to their request.

Ms. Noreen Ambrose clarified that notwithstanding Mr. Joseph's representation that Port staff agreed on a number of things which the Port did not necessary agree on most of the things that Mr. Joseph thought the Port agreed upon. The practice of law in this area of public trust is one that is very complicated and not necessarily become immediately evident to someone who reads up the Burton Act for the first time. Specifically, she clarified that the City Attorney's office does not agree with the position and recommendation as it relates to the conflict of interest. It is their practice to discourage any Commissioner throughout the City from voluntarily recusing themselves on a vote where there is no conflict and therefore, no appearance of conflict because of the duty that the Commissioners take to carry out the business of the City. It is important that Commissioners be encouraged to vote except in instances where there is either a conflict and/or actual appearance of a conflict.

With respect to the maximum profits, Ms. Ambrose clarified that the Commission, in carrying on its responsibilities as the trustees for the Port, is aware of the Charter provisions, the Burton Act and need not be informed of those provisions regularly as they are constantly operating. The second interesting fact with respect to maximum profits is that it does not parallel the language of the Burton Act. It therefore raises a legal question i.e. while the Burton Act and the Charter provide that the Port declare properties to be surplus to the trust needs that they have to obtain maximum profits which money would then be used to further the trust. That language was mandated by the State legislature and substituted with language that would achieve public interest. The City voters did not amend the Charter to reflect the Burton Act language. The Burton Act controls the City and County and the Port Commission's actions with respect to trust properties. We don't necessarily agree that the Charter requirement governs.

With respect to the nature of this project, the focus on the Ferry Building and the trust income or square footage ignores the larger program of harbor development which the Port Commission has been undertaking. The item before us on the agenda where the Commission previously authorized the expenditure of over $50 million for the Ferry Terminal improvements is one instance where the Port and the City are spending public money as part of the overall program to restore the Ferry Building areas which is the centerpiece of public trust activities on the waterfront. The $100 million being invested on the plaza and the transit improvements in front of the building further evidence the efforts that the Port is undertaking to historically preserve Pier One as it frames the Ferry Building harbor. Looking the Commission's responsibilities as trustees, they are looked at in the context of the larger program of activities for the trust fund. You don't look at one particular

square foot of property and decide whether or not it is consistent with the trust fund. It is the staff's position that this project is intended to further trust purposes. Even if pieces of the project is split out and looked at as standalone pieces the general office use which will likely be a part of an overall successful project is under Port's evaluation of one where the Wilson proposal offers the highest rate of return to the Port. Any individual development team representation as to what it would pay does not equate to what Port staff believes the Port is actually going to get. For purposes of analysis, there was an assumption made that every proposal was valid on its face because the factors which goes to evaluating the realism behind those projections were reflected in the project feasibility analysis and qualifications analysis. In that regard, the Wilson proposal ranked higher than the Mentmore proposal. It has to be considered in its entirety. With respect to statements of Mr. Joseph, she made it clear that we are not in total agreement on those points. With respect to the independent evaluation, Ms. Ambrose noted that an objective evaluation was performed and nothing was introduced into the record that would indicate to the contrary. It would not be appropriate for the Commission to delegate the evaluation to someone other than staff.

Mr. Osmundson pointed out that the full statement regarding the seniority of the debt issue is noted on page 19 of the RFP where we are looking for qualifications to evaluate in terms of the ability of the developer to successfully develop a project and the complete criteria that was listed includes as follows: (1) evidence of the developer's ability to successfully complete the concept for development based upon the ability to obtain from institutions acceptable to the Port debt and/or equity capital sufficient to complete the development; (2) the requirements that any lease income payable to the Port be senior to any developer debt or equity obligations. As stated in the staff report, staff tied those two together so that the seniority of the debt to lease income obligations is clear. In an earlier section of the RFP were the financial goals and objectives were set, staff required the developer provide the Port financial benefits equal to those it now receives, which is the reason why the participation of future increase revenues was listed. If we stand by our analysis, Wilson's proposal allows us to participate in future increase revenues based on a formula that included that equity. Mr. Osmundson concluded that Wilson's proposal was responsive and consistent with the requirement that lease can be subordinate if debt be senior to any leasing income requirements.

With respect to submittal requirements, the Port development goals, objectives, programs are identified on page 10 of the RFP. Staff also identified the selection criteria, the factors that staff used to evaluate the proposals. Submittal requirements have to do with the materials and the information that must be submitted in order for Port staff to make the evaluation. Submittal requirements have to do with the required information. With respect to the statement referring to the November 17th resolution which indicated that the four developers submitted responses to the Port's invitation and request for proposals which complied with the submittal requirements stated in the RFQ/P and the Port's subsequent request, staff was indicating that all required information had been submitted by all four proposers, not that every aspect of each proposal was consistent with or rated highly according

to the selection criteria as identified in the RFP.

Mr. Joseph concurred with Legal Counsel Ambrose that the Burton Act is indeed complicated. With respect to the question of whether the requirement for maximum profit is somehow eliminated because of the change of Burton Act, he pointed out that the City Charter was adopted with the maximum profit requirement in the Charter after the Burton Act was amended. He also pointed out that a provision of the City Charter could only be argued not to be applicable if it were in conflict with the Burton Act. There's nothing about the maximum profit language that is in conflict. He further pointed out that if you split the project and that somehow a part could be at a higher rate is not the right analysis. The Charter requires that the lease is to be at maximum profit. One has to look at the essential purpose of the lease, whether it is for trust or non-trust use. They believe that the compelling conclusion is it is for non-trust use. With regard to the objective evaluation, Ms. Ambrose indicated that there already was an objective evaluation. He pointed out that the Commission has not had an objective evaluation, certainly not one from a third party, that analyze the question of who has provided the maximum profit, taking into account all economic factors.

Commissioner McWilliams asked for an opportunity to caucus with the rest of the Commissioners about this issue.

Commissioner Hardeman moved approval that the Commission suspend Item 7 momentarily and go directly to Executive Session.

Legal Counsel Ambrose requested to speak privately with Commissioner McWilliams to ensure that the issue he wants to discuss in Executive Session would be an appropriate subject for executive session.

Legal Counsel Ambrose opined that Commissioner McWilliams concerns and comments were appropriate for open session.

Commissioner Hardeman withdrew his motion.

Mr. Osmundson indicated that staff believes that the preservation of a national landmark, civil engineering landmark, maritime building is rated extremely high and a significant maritime resource.

Commissioner McWilliams indicated that he was in the minority in the initial vote to award the Ferry Building contract. He weighed heavily the Port staff's recommendations. He supported not entertaining the protest. However, when the issue of maximum profit was discussed, it troubled him that the Port has not been required to answer the bottom line on the financial statement and not speculate, or anticipate or consider the impact on the community. He believed that if the Commission goes down this road, it is making future decisions that do not best serve the people of San Francisco when it comes to impact on the community,

particularly in maritime and other related issues. The idea of profit and maximum return to the City is very speculative to him. He thanked Mentmore/Mills for the opportunity to discuss this issue. The protest brought into question the whole process by which the Commission make decisions about the whole package, including funding, construction, management and design, which are of particular interest to him. Every single proposal brought something good to the process. If opportunity was afforded to the Commission to pick and choose, it might have picked something from each one proposal and would have ultimately ended up with the best product for the people of San Francisco. He understood that was luxury that the Commission cannot afford. The Commission is stuck in the process, which in some ways is unfortunate. The Commission is here to give heavy consideration to what comes before them and make the best decision as possible for the City, County and the region. The idea that technical loopholes can be challenged is in a way a disservice. He was afraid that the Commission would get into a situation that would hinder its ability to produce an acceptable product. He did not agree with the decision made but the decision has been made and the Commission needs to move forward. He thought that the Port and the City would be better served by moving forward and hoped that, in the future, decisions would be made in a different way.

ACTION: Commissioner Hardeman moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 98-122 was adopted.

B. Approval of the San Francisco Bay Trail in the Southern Waterfront through certain portions of Port of San Francisco jurisdiction. (Resolution No. 98-119)

Mr. Dan Bell indicated that the San Francisco Bay Trail project is a non-profit corporation that is administered and supported by the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission. The project is proposing a 400-mile walking and bicycle route around the bay. The route traverses public and private property in nine bay area counties and 42 shoreline cities. Approximately 40% of the proposed route has been accepted and approved by the necessary governmental agencies. ABAG is offering grants for the construction and maintenance of the bay trail. Recently, San Francisco Beautiful, a local non-profit organization orchestrated a partnership of City agencies and private organizations and was successful in obtaining an ABAG grant to implement and expand the bay trail through the Southern Waterfront. The City's Public Works will receive the grant funds and administer the Bay Trail implementation project both within the City and the Port jurisdiction. The projects within the Port jurisdiction are limited to sidewalk tree planting, installing bay trail signs and Class III bicycle route pole signs along Illinois, 24th Street, Arthur Street and portions of the north shore of Islais Creek. Class III Bike Route along Illinois Street will allow bicyclists to share the roadway with vehicles. It should be noted that the Port has previously agreed to implement Class II bicycle lanes along Terry Francois Boulevard as a BCDC condition of Pier 50 maintenance facility and the Giants Ballpark. The Port also has previously approved a Class III bicycle route along

Cargo Way and walking trails along Pier 98.

Presently, the sidewalk and roadway conditions along Illinois Street are unsafe and not adequate for Bay Trail and/or Class III Bike Route designation. Sections of the sidewalk are substandard and there are a number of abandoned railroad spurs within the roadway.

DPW is currently undertaking two public works projects that will improve Illinois Street. The two projects are: (1) Potrero Hill District Track Removal and Pavement Renovation and (2) Illinois/Ceasar Chavez Streets Sewer Replacement Project. The two projects will remove spur tracks on Illinois Street between El Dorado Street and 25th Street. The main railroad track will remain in the street to serve Pier 80. The roadway will be restored with asphalt concrete. The substandard sidewalks will be rebuilt. Curb ramps will be installed. The two projects will be completed by the end of 1999. The Bay Trail and Class III Bike Route signs will not be installed until these roadway improvements have been completed.

The resolution approves the designation of the Bay Trail through Port jurisdiction in the Southern Waterfront and allows DPW to install the requisite Bay Trail and Class III Bike Route pole signs after the roadway improvements are completed on Illinois Street. The resolution reserves the right of the Port Commission to reroute the Bay Trail and Class III Bike Routes within Port jurisdiction in the event future Port operations are negatively impacted by the Bay Trail designation. The resolution also requires that the Department of Public Works indemnify the Port of San Francisco against Bay Trail claims arising from any incidents within Port jurisdiction.

Commissioner McWilliams indicated that he was not aware that the footing for the bridge was designated Pier 98. He asked if there is some speculation that it is going to be a pier. Mr. Bell responded that it would be a wetland project, not a pier.

Bob Wilkins, California Conservation Corps project coordinator, indicated that they accept the challenge for their Corps members. The skills they built up in developing the structures in the trail will carry them forward in their future jobs. The ability to create something will have a lasting value to the community

Michael Alexander, from San Francisco Beautiful, indicated that this is part of the San Francisco Master Plan. They want to celebrate the waterfront and its great industrial history. This is a project that will be built primarily by local kids. There is a wonderful community support. This project has 11 partners: San Francisco Beautiful, SPUR, SLUG, Trust for Public Planning at Islais Creek, DPW, Rec & Park, Parking and Traffic, Port, MUNI and Redevelopment. They were able to put this partnership together, design a project that runs from China Basin for six miles all the way to Hunter's Point, fight for grant from ABAG and won 40% of all the

money that they were offering from 9 counties. He acknowledged Port staff's efforts: Dan Bell, Paul Osmundson and Carol Bach. He urged the Commission to support the resolution.

Terrell Smith, SLUG Youth Director, is in support of the Bay Trail for the beautification on the southeast sector of the town and it will bring services and jobs to the community and help the neighborhood youths.

Carl Grimm, SLUG, is in full support of the changes in the alignment of the Bay Trail and the benefit it would bring to the community particularly the safety of going to and from the community and the jobs it would provide and the environmental benefits that it would create.

Commissioner Brandon indicated that this is a wonderful project but she reiterated that the southern waterfront advisory committee would have loved to hear about the project. There are 12 members who live, work or own businesses within the southern waterfront. She asked that the committee be abreast of what's happening in the neighborhood. Mr. Bell replied to the affirmative.

Commissioner Hardeman indicated that he was delighted to see all the organizations working together with the community on this project in a short amount of time.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 98-119 was adopted.

8. FINANCE & ADMINISTRATION

A. Authorization to issue a Request for Proposals for a consultant to prepare an Economic Impact Report for the Port. (Resolution No. 98-115)

Mr. Ben Kutnick, Director of Finance and Administration, requested Commission's authorization to issue an RFP for a consultant to prepare an Economic Impact Report for the Port. The Port contributes substantially to the regional economy and the Port has no way to measure it. The Port of San Francisco is the only port in the West Coast that does not have an Economic Impact Report. Staff would like to hire a consultant to prepare the report at a cost of approximately $50,000. Port staff will be involved in the process. The consultant will develop and provide a model and instructions so that Port staff would be able maintain it.

Commissioner McWilliams asked if this study have comparisons of what growth in particular industries does to other communities. Mr. Kutnick responded that it should not only state what it is now but also provide multiplier effects to track cargo increases.

Commissioner McCarthy indicated that this was something she had wanted to see happen a long time ago. This was a subject discussed by several ports at a

conference she attended when she first came to the Commission. All of the ports have done a study; some better than others. Approximately two or three of the ports solicited their local universities and consequently got it done at a much cheaper rate and were pleased with the results. She suggested using this approach for this project. Mr. Kutnick replied that staff has already contacted local universities such as San Francisco State University.

ACTION: Commissioner Hardeman moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 98-115 was adopted.

Veronica Sanchez, Manager of Governmental Affairs, provided the Commission a status report on the Central America Relief Efforts. There is approximately 1.5 million tons of relief cargo for Central America at Pier 80. It is being stored at Pier 80 with the help and generosity of one of our tenants, Jim Wiltshire of Marine Terminals. She thanked Mr. Wiltshire and the Marine Terminals for the tremendous work they have done and for the patience of their staff in directing the volunteers at Pier 80. In addition to our warehouse, the Presidio warehouse is housing 1 million tons of cargo for Honduras and four containers full of cargo at the Oakland Naval Supply Center for Guatemala. Approximately 200 school vests were donated by San Francisco Unified School District, which were salvaged from the dump yard and will be sent to Guatemala. The bottleneck is that with government programs and funding available to send the cargo via military air or ship, there's a dispute on counting boxes. Our congressional delegation is trying to solve the bottleneck. Ms. Sanchez just recently received a call from the Pentagon and they are looking into the possibility of sending reserved troops to help count the boxes. With the assistance of Bob Morales of the teamsters, private fundraising efforts are in the works. The Port will embark on its private fundraising to its shipping lines and negotiate better tariff. The Hispanic Community Foundation will be the fiscal agent for those donations.

Commissioner McCarthy asked what the box counting entails. Ms. Sanchez replied that we have over 1500 pallets at the warehouse. The government insists that contents of each box should be counted. In the case of medical supplies, bottles must be counted and the expiration dates listed. This process would take a couple of months. In response to Commissioner McCarthy's inquiry with regard to the process, Ms. Sanchez replied that the government must know what it's carrying. Commissioner McCarthy inquired about media coverage. Ms. Sanchez replied that Channels 4, 5, 7 have already covered the story as well as stations from San Mateo and San Jose. Her letter to Congresswoman Pelosi regarding the dispute of counting boxes was sent to national press. It turns out that San Francisco is not only the City in the country that is encountering this dilemma.

Commissioner McWilliams thanked Ms. Sanchez for her efforts in coordinating the work and made a minor correction of the unit of cargo – it should have been pounds instead of tons.

9. CONSENT CALENDAR

A. Adoption of the Ferry Building Leasing Parameters. (Resolution No. 98-123)

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 98-123 was adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Commissioner Hardeman requested that the meeting be adjourned in memory of Senator Milton Marks and a note sent to his family. Executive Director Wong concurred.

11. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

At 5:21 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR - This is specifically authorized under California Government Code Section 54956.8. ***This session is closed to any non-City/Port representative.****

a. Property: Triangle site at Seawall Lot 300/301
Person Negotiating:
Port of San Francisco: Douglas F. Wong, Executive Director
Alioto's: Nunzio Alioto*

b. Property: Pier 80
Person Negotiating:
Port of San Francisco: Philip Smith, Director of Real Estate
RMC Lonestar: Eric Woodhouse, Executive Vice President*

c. Property: Portions of Pier 48/Pier 50
Person Negotiating:
Port of San Francisco: Philip Smith, Director of Real Estate & Larry Florin, Director of Special Projects
Pan Pacific Expo: Art Blum*

d. Property: Francisco Bay Office Park

Person Negotiating:
Port of San Francisco: Douglas F. Wong, Executive Director
Stein Kingsley Stein: Lou Giraudo*

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS:

a. Discuss significant exposure to litigation pursuant to subdivision (b) of the California Government Code Section 54956.9 (one case).

b. Discuss existing litigation matter pursuant to subdivision (a) of the California Government Code Section 54956.9 (one case).
- Peer Inn, Federal Bankruptcy Court, Case No. 98-31586TC.

12. RECONVENE IN OPEN SESSION

At 7:35 p.m., Commissioners McCarthy, Brandon, Hardeman and McWilliams returned from executive session and convened in public session.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in the executive session. The Commission has given direction to the Executive Director on how to proceed with Item (1)a and (2)a was not heard on executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:38 p.m.